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Current Topics.

The Probation System.

LORD HEWART, C.J., again emphasised the importance and value of the probation system at a recent dinner in aid of the Clarke Hall Fellowship for the development of juvenile courts and probation, at which the DUKE OF KENT presided. The learned Lord Chief Justice pointed to the danger of a youth getting used to prison and emphasised his conviction that the real hope was to save the young offender. "If," the speaker said, "you look at any tolerably accurate account of the inhabitants of prisons you will find that an awful number of them went to prison for the first time when they were quite young. The wise and prudent course is to save those youngsters from making acquaintance with gaol, a doctrine that has been universally recognised. The difficulty is to get the right people for the work. I have not sufficient words of praise for the devotion of probation officers. I am impressed with the fact that there are many delinquents still sent to prison at an early age. I do not wish to make any reflection upon any person who has to administer the criminal law, but nearly every morning when I sit in the Court of Criminal Appeal and hear appellants, I am impressed with the fact that many are sent to prison at a very early age. The root of this trouble, as is the root of so many troubles, is mere selfishness and the particular selfishness which exhibits itself in indolence. When a young offender has pleaded guilty or when he is found guilty by a jury, it is so easy either to bind him over to come up for judgment if called up or to pass a slight sentence of imprisonment—one, two or three months. What is really needed is the care and patience required. I am not drawing any distinctions or singling out any tribunal. To put an offender under the care of probation officers is a method that calls for a little care and thought, but in my opinion there is no single matter of greater importance in the administration of the criminal law of this country than a wise application of the probation system." We have previously alluded to this subject in these columns and, indeed, quoted words of the Lord Chief Justice in this connection. But its intrinsic importance and the occasion provided by the aforesaid speech justifies this further reference to the matter.

Railway and Canal Commission: Report for 1936.

PRACTITIONERS concerned with the law relating to mining and quarrying are likely to find much of interest to them in the recently issued annual report for 1936 of the Railway and Canal Commission, which reviews applications made under the Coal Mines Acts. The report records a continuance of the process of colliery amalgamation on a voluntary, though not on a compulsory, basis. Since the refusal to confirm the West Yorkshire amalgamation scheme of the Coal Mines Reorganisation Commission pending further proposed legislation, the Reorganisation Commission, it is stated, has referred no further compulsory amalgamation scheme to the Railway and Canal Commission. On the other hand, colliery owners have been availing themselves of the facilities given under Part I of the Mining Industry Act, 1926, and several voluntary amalgamation schemes have been confirmed. The report also records that a considerable further acreage of coal is being worked under orders made by the Railway and Canal Commission during the year, and that orders have been made for working and ancillary rights in several applications made by quarry companies. Mention is made of an interesting application for the hearing of which the Commission sat in Edinburgh. The application by a colliery company desiring to open a new coalfield on the outskirts of Glasgow was strenuously opposed by, among others, the Corporation of Glasgow, it being alleged that, if the application was granted, an extensive housing scheme of the corporation would be sterilized. The hearing was adjourned in order that the applicants might put down further boreholes to prove the nature of the coalfield. In addition to the review of the applications made under the Coal Mines Acts, the report gives an account of the litigation and judgment in the appeal of the Southern Railway Company, under the Railways (Valuation for Rating) Act, 1930. The report is published by H.M. Stationery Office, price 6d. net.

Parish Council Elections: Poll.

A WRITER to *The Times* has pointed to an interesting fact in connection with the triennial elections of parish councils occuring in the present year. For the first time it has been possible for a parish council or parish meeting to decide beforehand that election shall take place by poll

instead of the method usually adopted, by show of hands. It is pointed out that a poll has always been obtainable on demand at the parish meeting of a certain number of the electors present but, it is said, "openly to demand a poll implies criticism in public of the existing council, which requires a good deal of moral courage." Polls have, in consequence, been rare. The new facility is derived from the proviso in s. 51 (1) of the Local Government Act, 1933, which is to the effect that a county council may, at the request of the parish council or parish meeting, by order direct that the parish councillors for that parish (or, if the parish is divided into parish wards, for the wards of that parish) shall cease to be elected at a parish meeting, and shall be elected by means of nomination and, if necessary, a poll. The writer already referred to suggests that the expense of election by poll, as compared with election by show of hands, is likely to be a serious obstacle to its general adoption. A poll, he states, including returning officer's fee, printing of advertisements and notices, and other incidentals, usually costs £10 to £20, and, although this may seem a small figure, in an agricultural parish it may mean anything up to a 4d. rate. We learn from the same source that the National Council of Social Service, which, it is stated, is deeply interested in every aspect of village life, has instituted an inquiry as to what advantage is being taken of the new facility. Parish councils, women's institutes, and other organisations have been circularised to ascertain how many parishes are holding this year's elections by poll, how many would like to do so but have been deterred by the expense, what that expense is or would have been, etc. If it is shown that there is real dissatisfaction with the system of open voting, but that a poll of the present elaborate kind is more costly than most villages can reasonably afford, the way, it is said, will be prepared for considering some less expensive method of secret ballot for these village elections.

Young Workers : Need for Legislation.

In the course of a memorandum recently sent to the Government by the Committee on Wage-Earning Children, the need for giving effect to the recommendations of the Departmental Committee on the Hours of Employment of Young Persons in certain unregulated occupations is strongly urged. The Committee records with satisfaction the Home Secretary's intention to include within the scope of the Factories Bill young workers employed in connection with factories, docks and warehouses, expresses its desire that the Bill should embrace all types of work entered upon by van-boys, but states that there will still remain large numbers of young persons—those employed as lift-boys, page-boys, attendants at cinemas and other places of entertainment are among the examples given—for whom fresh legislation is urgently required. The memorandum cites certain of the evidence given before the Departmental Committee and refers to the finding that there was a definite need for the regulation of the hours of the young persons who formed the subject of the inquiry. The Committee held, it is recalled, that there was a substantial proportion of excessive hours among van-boys, page-boys and lift-boys, that night occupation was a problem in certain occupations, and that the long spread-over in connection with work as page-boys and attendants at cinemas kept young people all day at the disposal of the employer and prevented opportunities for continued education and recreation. The considerable amount of time in London and other large cities spent in travelling to and from work was also alluded to. The Committee on Wage-earning Children hopes that the Government will accept the view of the Departmental Committee that the need for legislation is immediate, and that the Government will introduce a Bill in the course of the year; while it is urged that active steps should be taken to give full protection to all young persons under eighteen and that their working week should be limited in future to forty hours without overtime or night work.

Local Government Superannuation Bill.

Brief mention should be made of the Local Government Superannuation Bill, which has formed the subject of a recent explanatory memorandum by the Minister of Health (Cmd. 5452, H.M. Stationery Office, price 3d. net). This memorandum recalls the appointment of the Departmental Committee (under the chairmanship of Sir L. Amherst Selby-Bigge) whose business it was to review the operation of the Local Government and Other Officers' Superannuation Act, 1922 (which is, of course, an adoptive Act), and, *inter alia*, to consider whether its provisions should be made obligatory on all local authorities. The present Bill, which is of general application to all local authorities in England and Wales, has, it is stated, been prepared in the light of the report of that committee and after consultation with representatives of the associations of local authorities and organisations representing their employees. The objects of the Bill are to ensure that proper provisions shall be made by all local authorities for the superannuation of their whole-time officers, to remove existing diversities of practice in this respect, and to effect a number of amendments in the existing law suggested as desirable by experience—including, so far as new entrants are concerned, some modification in the financial basis of local government superannuation. The present rates of contribution are 5 per cent. of remuneration from both officers and servants, with an equivalent contribution from the local authority, but it is noted that the committee already referred to recommended that the rate for the latter should be less than for the former. "It is estimated," the memorandum states, "that, in present circumstances, the total contribution required to secure benefits similar to those provided under the existing law for officers is 12 per cent. and for servants 10 per cent., and the Bill accordingly proposes that the contribution to be required from persons brought under the scheme for the first time should be 6 per cent. in the case of officers and 5 per cent. in the case of servants, the local authority contributing an equal amount in both cases." It is proposed that the new Bill should provide in itself a complete code governing the superannuation of all local government employees other than those for whom special provisions already exist.

Oil in Great Britain.

In view of previous notes which have appeared in these columns on the subject, it may not be out of place briefly to refer to the recent announcement by the Secretary for the Mines Department that a further 19 prospecting licences under the Petroleum (Production) Act, 1934, and the Petroleum (Production) Regulations, 1935, have been issued by the Board of Trade. Nine of these licences have been granted to the Gulf Exploration Company (Great Britain) Limited, covering areas aggregating some 1,277 square miles in Kent, Sussex, Dorset, Wiltshire, Somerset and Yorkshire, while 10 licences granted to the D'Arcy Exploration Company Limited cover about 1,649 square miles in Kent, Sussex, Surrey, Yorkshire, Nottinghamshire, Derbyshire, Staffordshire, Shropshire and Cheshire. Particulars of the situation and boundaries of the areas licensed were published in the *London Gazette* of 27th April, and a map showing the areas for which licences have been issued can be inspected on application to the Petroleum Department, Mines Department, Dean Stanley House, Millbank, S.W.1.

Rules and Orders : Road Traffic.

Brief mention should be made of the recent Goods Vehicles (Licences and Prohibitions) (Amendment) Regulations, 1937, which relate to identity certificates required to be carried on all vehicles licensed under the Road and Rail Traffic Act, 1933. The regulations, which have been made by the Minister of Transport, provide that such certificate may be carried, if the licence-holder so desires, on the windscreen of the vehicle near the road fund licence, while, in the case of a vehicle

operating under a general trade licence, the certificate may, at the licence-holder's option, be affixed to the general trade plate either at the front or at the rear of the vehicle, provided that no material portion of the plate is obscured. Of more general interest are the regulations recently made by the Minister of Transport governing the duration of road licences for public service vehicles. Their general effect is to extend to three years the period of validity of road service licences for stage carriage services granted after 8th May of the present year, and thus to relieve operators of such services from the necessity of making annual application to the Traffic Commissioners. It is stated that these regulations are to be regarded for the present as being of an experimental nature.

Rules and Orders : Public Health : Imported Food.

THE attention of readers may be briefly drawn to the Public Health (Imported Food) Regulations, 1937 (S. R. & O., 1937, No. 329), which have been made by the Minister of Health in exercise of powers conferred on him by the Public Health Act, 1875, the Public Health Act, 1890, the Public Health (Regulations as to Food) Act, 1907, and the Public Health (London) Act, 1936. These regulations amend and consolidate the Public Health (Imported Food) Regulations, 1925, and the Public Health (Imported Food) Amendment Regulations, 1933, which are revoked from 1st January, 1938, when the new regulations come into operation. Under the existing regulations the importation of certain meats is prohibited, of others is allowed, while there is a third class which is admissible if accompanied by an official certificate recognised by the Minister of Health. The first of these is set out in the First Schedule to the present regulations, the third in the Second Schedule. The effect of the new regulations is to extend to practically all admissible meat and meat products the requirement of an official certificate recognised by the Minister, while the importation of certain classes of meat remains, as before, prohibited. The term "Conditionally Admissible Meat" disappears, and the schedules to the new regulations are entitled respectively "Prohibited Meat" and "Meat Products." Official certificates are given by the country of origin, but they are not recognised by the Minister of Health until he is satisfied that they can be regarded as evidence of hygienic preparation and satisfactory inspection. All food is, of course, subject to inspection at the port of entry, and to seizure and condemnation if it is found to be unsound, but the system of official certificates which the new regulations extends is recognised as providing a special means of additional control. The regulations and an explanatory circular (No. 1522) are published by H.M. Stationery Office, prices respectively 3d. and 1d.

Recent Decisions.

IN *Gowers and Another* v. *Lloyds and National Provincial Foreign Bank Ltd.* (*The Times*, 8th May), LAWRENCE, J., held that the Crown Agents for the Colonies were not in a position to recover from the defendant bank money paid by the bank against forged receipt forms which held out a deceased pensioner in Mauritius customs service as living after he had in fact died. The money, it was held, could not be recovered as money had or received, or money paid under a mistake of fact. The money had been paid over by the bank to the supposed principal and it could not be recovered (*Taylor* v. *Metropolitan Rly. Co.* [1906] 2 K.B. 55; *Kleinwort* v. *Dunlop Rubber Co.*, 23 T.L.R. 696).

In *Avery* v. *London and North Eastern Rly. Co.*; *Same* v. *Same*; *Harris* v. *Same*; *Same* v. *Same*; *Bonner* v. *Same*; *Same* v. *Same*; *Watson* v. *Same*; *Same* v. *Same* (*The Times*, 12th May), the Court of Appeal (SLESSER and ROMER, L.JJ. and LUXMOORE, J.) indicated the principles applicable where widows of workmen who meet with fatal accidents arising out of and in the course of their employment seek to recover damages under the Fatal Accidents Acts, 1846 and 1864, and the Employers Liability Act, 1880, while their children claim compensation as dependents under the Workmen's Compensation Act, 1925. It was held (*a*) that a widow bringing an action under s. 1 of the Fatal Accidents Act (Amendment) Act, 1864, must be taken as having brought it for the benefit of herself and her children, and that although the children make no claims under that Act, it is incumbent on a county court judge to ascertain damages attributable to the whole group proportioned to the injury resulting from the death of the workman, and to award to the widow her proportionate share and no more; (*b*) that the limits imposed by s. 3 of the Employers Liability Act, 1880, relate to the total sum payable to the group and, therefore, the proportion being ascertained of her share to the total amount awardable under the Fatal Accidents Act, there should be such an abatement of her claim as would give her that share which she would have taken under that section had the other dependents made their claims and been compelled to suffer their appropriate abatements; (*c*) that the fact that a widow had elected to proceed under the Fatal Accidents Acts and the Employers Liability Act did not preclude her children from taking proceedings by arbitration under the Workmen's Compensation Act (the elections of the mother and children under s. 29 being independent); and (*d*) in assessing the compensation payable to the children under s. 8 of the Workmen's Compensation Act, 1925, a county court judge was not justified in excluding a widow dependent upon the earnings of the deceased from the ascertainment of the lump sum to be found under that section for the reason that she was not a claimant, although her share might, owing to the fact that she had elected to proceed otherwise, not in fact be recoverable by her. The cases, which arose out of a railway accident resulting in the death of four platelayers, were remitted to the county court judge for fresh calculation and assessment on the foregoing principles.

In *Unsworth* v. *Pease and Partners, Ltd.* (*The Times*, 12th May), the Court of Appeal (GREENE, M.R., ROMER and SCOTT, L.JJ) upheld a decision of a county court to the effect that money earned by a collier during the twelve months prior to an accident as a sub-checkweighman at the colliery and also as a local or branch official of his trade union were to be taken into account in arriving at the amount of his pre-accident earnings under s. 10 of the Workmen's Compensation Act, 1925, as earned in pursuance of concurrent contracts of service.

In *Bank of Ethiopia* v. *National Bank of Egypt and Liguori* (*The Times*, 12th May) CLAUSON, J., held, on an issue directed to be tried in an action in which the plaintiff bank claimed from the defendant bank an account of moneys and securities received or held by the latter for the account of the former; etc., that the plaintiff bank whose principal place of business was at Addis Ababa, had been dissolved and that as the action had been brought otherwise than by or under the authority of the liquidator, it had not been authorised by the bank. The learned judge alluded to the recognition by the British Government of the Italian Government as the *de facto* government of the area under Italian control, to the decree of dissolution, and to the decisions on the questions before the Court which would have been reached by the courts of the *de facto* government at Addis Ababa, had those questions been before them.

In *Morgan* v. *Ashcroft* (*The Times*, 12th May), the Court of Appeal reversed a decision of a county court judge, and held that a bookmaker was not entitled to recover from his client money which by a mistake had been credited twice over to the latter's account. The learned Master of the Rolls intimated that, to determine whether a payment had been made under a mistake of fact, the court would have to examine the accounts between the parties. That the court was not entitled to do, because it would involve recognising wagering transactions.

Criminal Law and Practice.

MANSLAUGHTER AND THE ROAD TRAFFIC ACTS.

THE law with regard to manslaughter in its relation to the Road Traffic Acts can now be taken as settled, and that very clearly and decisively, by the judgment recently delivered by Lord Atkin in the House of Lords in *Andrews* v. *Director of Public Prosecutions*, 53 T.L.R. 663.

The appellant had been convicted at Leeds Assizes on an indictment for manslaughter and sentenced to fifteen months' imprisonment and disqualification from holding a driving licence for the rest of his life.

In speaking of the difficulty of definition of the term "manslaughter" his lordship said that it was based mainly though not exclusively on the absence of intention to kill but with the presence of an element of "unlawfulness," which was the elusive factor. He added that in the present case it was only necessary to consider manslaughter from the point of view of an unintentional killing caused by negligence.

There were expressions in the earlier cases, proceeded the judgment, which indicated that to cause death by any lack of due care would amount to manslaughter, but as manners softened and the law became more humane, a narrower criterion made its appearance. Words like "criminal" and "gross" were used in order to indicate that a high degree of negligence had to be proved in order to constitute the crime of manslaughter.

His lordship then quoted, with qualified approval, from the judgment of the Lord Chief Justice in *Rex* v. *Bateman*, 41 T.L.R. 557, where he said that the facts must be such that in the opinion of the jury the negligence of the accused went beyond a mere matter of compensation between subjects and showed such disregard for the life and safety of others as to amount to a crime against the State, and conduct deserving punishment.

Of all the epithets that could be applied his lordship favoured the epithet "reckless" most, but added that it was not all-embracing, as a person might show such a high degree of negligence in the means he adopted to avoid a risk, as to be guilty of manslaughter, without being reckless or indifferent to risk.

The prohibitions in the Road Traffic Acts, his lordship said, extended to degrees of negligent driving which, if death were caused, would justify convictions for manslaughter, but they also extended to degrees of negligence of less gravity. Section 12 of the Road Traffic Act, 1930, would apparently cover all degrees of negligence, as it imposed a penalty for driving without due care or attention. Section 11 would cover manslaughter, as it imposed a penalty for driving recklessly or at a speed or in a manner which was dangerous to the public. But, his lordship said, it was perfectly possible that a man might drive at a speed or in a manner dangerous to the public and yet not be guilty of manslaughter. The legislature had recognised this by providing in section 34 of the Road Traffic Act, 1934, that on an indictment for manslaughter a man might be convicted of dangerous driving.

The form of summing up which his lordship finally approved as suitable for a case of manslaughter was one in which the judge in the first instance charged the jury substantially in accordance with the general law, that is, requiring the high degree of negligence indicated in *R.* v. *Bateman*, and then explained that that degree of negligence is not necessarily the same as that which is required for the offence of dangerous driving, and then indicated to them the conditions under which they might acquit of manslaughter and convict of dangerous driving. In his lordship's opinion a direction that all the jury had to consider was whether death was caused by dangerous driving within s. 11 of the Road Traffic Act, 1930, and no more, would be a misdirection. There were passages in the summing up in the present case which his lordship thought were open to criticism, but on consideration of the summing up as a whole he was satisfied that the true question was left to the jury, and the appeal was accordingly dismissed.

Hitherto the element of unlawfulness has, as Lord Atkin rightly observed, been "the elusive factor." In 1893, in *Reg.* v. *Kempson*, 28 L.J. News. 477, a prosecution of a shopkeeper for manslaughter of a person who died as a result of eating unsound meat purchased from the shopkeeper was successful. A commentator on the above decision stated that there were two ways in which the facts could be held to constitute manslaughter: first, that the death was the result of the criminal act of selling diseased meat; and secondly, that the accused was guilty of gross negligence.

In *Reg.* v. *Senior* [1899] 1 Q.B. 283, a conviction of manslaughter of a child owing to the prisoner's neglect to call in medical aid was upheld. Under the Prevention of Cruelty to Children Act, 1894, s. 1, it was an offence if a person who had the custody of any child wilfully neglected such child in a manner likely to cause injury to its health. The prisoner belonged to a sect who objected on religious grounds to calling in medical aid. Lord Russell of Killowen, C.J., quoted from the summing up of Wills, J., as follows: "If he has done anything which is expressly forbidden by statute and by so doing has caused or accelerated the child's death he would be guilty of manslaughter, no matter what his motive or state of mind." Lord Russell added: "The question is whether that direction was substantially right. I think it was."

Recent authority on the subject of the relationship between breaches of the Road Traffic Acts and manslaughter does not deal adequately with *R.* v. *Senior*. In *R.* v. *Stringer* [1933] 1 K.B. 704, the appellant was charged on two counts, one for manslaughter and the other for dangerous driving contrary to s. 11 of the Road Traffic Act, 1930. He was acquitted of the charge of manslaughter and convicted under the Road Traffic Act. It was submitted that the verdict was bad because the *mens rea* required for both offences was the same, and that, as he was acquitted of the first charge, he should be acquitted of the second also. Humphreys, J., asked: "If a man drives 'without due care and attention' in breach of s. 12 of the Road Traffic Act, 1930, and kills someone, do you say he is guilty of manslaughter?" Counsel answered: "It seems so, for he is doing an unlawful act," and proceeded to quote the authority of *R.* v. *Senior*. The appeal, however, was dismissed on the ground that the appellant could not have pleaded *autrefois acquit* if there had been two separate indictments.

The new House of Lords decision has therefore in a sense made law by ignoring *R.* v. *Senior* as far at any rate as offences under the Road Traffic Acts are concerned. Motorists as well as the legal profession will have cause to be grateful to Lord Atkin for a judgment which lacks nothing in clarity and common sense.

Law Revision Committee's Report.

IN January, 1934, Viscount Sankey, then Lord Chancellor, appointed a committee "to consider how far, having regard to the statute law and to judicial decisions, such legal maxims and doctrines as the Lord Chancellor may from time to time refer to the committee require revision in modern conditions"; and among the specific matters subsequently referred to the committee were (*a*) whether, *inter alia*, s. 4 of the Statute of Frauds, 1677, and s. 4 of the Sale of Goods Act, 1893, should be amended or repealed, and (*b*) whether and, if so, in what respect, the doctrine of consideration requires consideration.

The Statute of Frauds, or to give it its official designation, "An Act for Prevention of Frauds and Perjuries," fills a large place in the history of English law. Its authorship has been

generally attributed to Lord Chancellor Nottingham with, however, various contributions from other distinguished lawyers of the time. In the sketch of Nottingham, in the "Lives of the Chancellors," Campbell refers to the Act as "the most important and beneficial piece of juridical legislation of which we can boast," though it is curious to observe that elsewhere he described it as having promoted more frauds than it prevented—so inconsistent may the judgments even of Lord Chancellors be at times. Every section of the Act has led to much litigation, and as a great authority truly said: "in the great majority of cases its operation is simply to enable a man to break a promise with impunity, because he did not write it down with sufficient formality." What then did it do? Section 4 provided that no action should be brought whereby to charge an executor or administrator upon any special promise to answer damages out of his own estate; to charge a defendant upon any special promise to answer for the debt or default of another person; to charge a person upon any agreement made upon consideration of marriage; or upon any agreement that is not to be performed within one year from the making thereof: "unless the agreement upon which such action shall be brought, or some memorandum or note thereof shall be in writing, and signed by the party to be charged therewith or some other person thereunto by him lawfully authorised." Section 17 of the same statute is now replaced by s. 4 of the Sale of Goods Act, 1893, which provides that "a contract for the sale of any goods of the value of £10 or upwards shall not be enforceable by action unless the buyer shall accept part of the goods so sold and actually receive the same or give something in earnest to bind the contract or in part payment or unless some note or memorandum in writing of the contract be made and signed by the party to be charged or his agent in that behalf." No doubt there was something to be said in favour of provisions such as these when the Statute of Frauds was passed, and indeed for many years later, till, in fact, the parties to an action were made competent witnesses by the Act, 14 & 15 Vict., c. 99. To require some written evidence of a contract was, therefore, no unwise enactment, but to-day, as the committee point out, the provisions of the Act of 1677 in this matter are an anachronism and entirely out of accord with the way in which business is normally done; and further, the operation of s. 4 of the Sale of Goods Act is extremely lopsided and partial. A and B contract; A has signed a sufficient note or memorandum, but B has not. B can enforce the contract against A, but A cannot enforce it against B. Again, A who by an oral contract buys or sells £10 of goods cannot (subject to acts of part payment) enforce his bargain, yet a man who orally contracts to do work or to sell shares can enforce his bargain, and have it enforced against him, however great the amount involved. In view of these anomalies, resulting oftentimes in protracted litigation, the committee think that the time has come for the repeal of s. 4 of both Acts. That they have survived so long is remarkable; old customs die hard; but now that their present-day inutility has been so clearly demonstrated as in the committee's report there should be no hesitation in providing for their repeal.

The second matter which engaged the attention of the committee was the doctrine of consideration which is peculiar to English law. In his work on "Contract," the late Sir William Anson said that it was hard to discover how consideration came to form the basis upon which the validity of informal promises rests, but that it does so is well established. Lord Mansfield, it is true, raised the question in 1765 whether in the case of commercial contracts made in writing consideration was essential; but in this Mansfield was before his time, for in *Rann* v. *Hughes* (1778), 7 T.R. 350, his view was emphatically disclaimed. To what strange conclusions the doctrine sometimes led was strikingly illustrated in *Pinnel's Case* (1602), 5 Rep. 117, where it was decided that "payment of a lesser sum on the day in satisfaction of a greater cannot be any satisfaction for the whole, because it appears to the judges that by no possibility a lesser sum can be satisfaction to the plaintiff for a greater sum; but the gift of a horse, hawk or robe, etc., in satisfaction is good." Upon this, Sir George Jessel, M.R., poured scorn in *Couldery* v. *Bartrum* (1881), 19 Ch. D. 394, when he said: "According to English common law a creditor might accept anything in satisfaction of his debt except a less amount of money. He might take a horse, or a canary, or a tom-tit, if he chose, and that was accord and satisfaction; but by a most extraordinary peculiarity of the English common law, he could not take 19s. 6d. in the pound; that was *nudum pactum*." This nonsense, in the opinion of the committee, should be abolished, and they so recommend with various other alterations in the application of the doctrine. Thus, they recommend, *inter alia*, that an agreement shall be enforceable if the promise or offer has been made in writing by the promisor or his agent, or if it be supported by valuable consideration past or present, and further, that a promise shall be enforceable by the promisee though the consideration is given by or to a third party. The fulfilment of promises, which to the ordinary citizen may appear an elementary duty, will be less hampered in the future if these wise recommendations of the committee receive Parliamentary sanction, as we trust they will at no distant date.

Charging Orders in Partnership Actions.

THE recent decision of the Court of Appeal in *Newport* v. *Pougher* [1937] 1 Ch. 214, 81 SOL. J. 78, is of considerable value as affording a needed corrective to a practice in partnership actions. The object of an action for dissolution of partnership is to determine the rights of the parties *inter se*, and for that purpose it is necessary to have proper accounts taken and generally to have a receiver appointed to get in and realise the partnership assets, pay the debts and distribute the surplus. With all this creditors of the firm are not necessarily concerned, and as such they have no *locus standi*. But the liability of the partners is joint only, and not several (*Kendall* v. *Hamilton*, 4 App. Cas. 504), the remedies of creditors are only available against the partnership estate, and that estate may not turn out to be sufficient to pay the creditors in full. A creditor may have sued the firm to recover his debt and obtained judgment, but once a receiver has been appointed by the court, and has taken possession of the assets the creditor cannot issue execution for a judgment debt, without obtaining the leave of the court. An application for such leave was made to Kay, J., in *Kewney* v. *Attrill* (1886), 34 Ch. D. 345, but instead of giving leave, at the suggestion of counsel for the partners, to save expense, he made a charging order on the assets which then were in or might come into the hands of the receiver in favour of the creditors. And in delivering judgment he said that the intention of the court was to preserve to the applicants all the rights which they would have had if they had issued execution and the sheriff had seized and sold the goods. There is nothing in the report to suggest that he meant that these words should form part of the terms of the order, but the practice which has grown up since that decision was given has been to incorporate them into the order, so that a *Kewney* v. *Attrill* charging order came to be known as a definite stereotyped form. The precise effect of such an order, as regards priority between creditors, has been in doubt for some time, and has now been finally settled by *Newport* v. *Pougher*.

In that case a receiver had been appointed in a partnership action where the defendant had been adjudicated bankrupt, and the plaintiff was impecunious and took no further steps

in the action. The assets paid into court amounted to £1,414, as against which the liabilities of the firm were more than three times that figure. A firm of solicitors who had acted for one of the parties obtained a *Kewney* v. *Attrill* charging order for their costs on the funds in court, and at a later date two other firms obtained charging orders under s. 69 of the Solicitors Act, 1932, on those funds as being property preserved or recovered by their exertions. On a petition being presented by the first-named creditors the question arose whether the *Kewney* v. *Attrill* order gave any priority to the creditors who obtained it over any other, and which, creditors. Eve, J., before whom the matter came, and who reserved judgment over a long period, decided that the orders obtained under the Solicitors Act ranked equally and before any other claims, and that the *Kewney* v. *Attrill* order, although it might protect the creditor in the event of the firm's bankruptcy, in the present case afforded no priority over the claims of the general creditors. On appeal, the Court of Appeal has reversed his decision on the latter point and held that the order made by Bennett, J., in the present case gave a prior charge to the creditor obtaining it over the general creditors, subject to the solicitors' charging orders. Both Lord Wright, M.R., and Romer, L.J., thought that some confusion had been caused by an interlocutory observation of Kay, J., in *Kewney* v. *Attrill*, reported in the Law Reports, to the effect that by the appointment of a receiver the court aimed at equality among the creditors. But the creditors, as such, have no interest in a partnership action: *Mitchell* v. *Weise* [1892] W.N. 139. And whichever remedy is pursued by a judgment creditor, leave to issue execution, or an order in the *Kewney* v. *Attrill* form, the result is the same, the creditor gets a priority over the general body.

In future there will, however, be no stereotyped form of *Kewney* v. *Attrill* order, and the words which have generally been inserted expressing, not altogether correctly, the intention of the court will be omitted from charging orders.

Company Law and Practice.

Stock.

A COMPANY is given power by s. 50 (1) (*c*) of the Companies Act, 1929, to alter its memorandum of association by converting all or any of its paid-up shares into stock and to re-convert such stock into paid-up shares of any denomination. There is, however, no further guidance to be found from the Act itself in determining the questions of what is stock and what is the difference between stock and shares. They are clearly of a very similar nature, for s. 380, the interpretation section, provides that "share" means share in the share capital of a company and includes stock, except where a distinction between stock and shares is express or implied. And in the case of *In re Willis* [1911] 2 Ch., at p. 57, Eve, J., says, in discussing the difference between stock and shares, "Upon these points I accept what Lord Pearson said in *Henderson* v. *Henderson's Trustees*, 37 S.L.R. 976, that there is an obvious distinction between preference stock and preference shares, and that the distinction, though obvious, is minute. In that case it was held that a power to trustees to invest in preference stock could not be held to include a power to invest in preference shares. It is perhaps of interest in this connection to observe that the Trustee Act, 1925, refers generally to stock and not shares, but that by the interpretation section, s. 68, stock includes (*inter alia*) fully paid-up shares. It is only fully paid-up shares that may be converted into stock and a limitation of this kind is clearly necessary if only on the ground of convenience, for though some provision is generally made therefor in the articles, if there is no provision as to limiting the amount of stock transferable then there is no limit to the smallness of the amount which may be transferred.

In the case of *Morrice* v. *Aylmer*, 10 Ch., at p. 153, Lord Cairns, in considering the meaning of the word "stock," observed that s. 61 of the Companies Clauses Consolidation Act, which gives a power to companies to convert fully paid-up shares into stock, was the first occasion on which the term "stock" was applied by the authority of Parliament to interests in railways. After dealing with the subsequent provisions in that Act as to stock, he goes on to say: "It is to be observed that the term 'stock' or 'capital stock' which is there used obviously is derived from the consideration that these were what were called joint stock companies and that 'stock' was the short name for joint stock, and joint stock is, in my opinion, only another name for shares, because the owner of part of the capital of a company is an owner of a part or share of the joint stock. The use of the term 'stock' appears to me merely to denote that the company have recognised the fact of the complete payment of the shares, and that the time has come when those shares may be assigned in payments which, for obvious reasons, could not be permitted before . . ." He then goes on to decide that in this case, in which the question was whether a gift in a will of shares will carry stock, that for the purposes of a case of that kind stock and shares are identical and consequently the stock passed. On appeal to the House of Lords in this case, L.R. 7 H.L. 717, Lord Halsbury denotes stock as being simply a set of shares put together in a bundle with the added peculiarity that it can be transferred in a way in which shares cannot be.

In re Home and Foreign Investment and Agency Co. Limited [1912] 1 Ch. 72, was a case in which there had been a considerable number of irregularities in dealing with the capital, and it affords several examples of the difference between stock and shares. The company's articles of association did not exclude Table A of 1862, and consequently the company had power to convert its fully paid-up shares into stock. At the date of the winding up, the capital of the company consisted of 4 per cent. preference stock, fully paid ordinary stock, half-paid ordinary stock, and half-paid £5 shares. All the creditors had been satisfied and the question before the court was merely to divide the rights of the different classes of members of the company *inter se*. A part of the preference stock represented fully paid preference shares converted into stock at their face value. No difficulty was found in deciding that this stock was entitled to rank in the distribution and return of capital as if it were fully paid shares. The next block of the preference stock to be considered had been issued directly by the company as stock, a thing which they could have had no power to do. Swinfen-Eady, J., referred to the remark of Lord Halsbury quoted above, and said that in his opinion he was entitled to treat the omission of the intermediate formality of issuing shares and then converting them into stock as a mere irregularity and look at the substance of the transaction which was that the allottees paid their money in respect of a corresponding amount of notional shares that were *esinstanti* converted into stock. The balance of the 4 per cent. preference stock had been issued for particular reasons to a certain class as bonus stock which was held to be *ultra vires* the company. The result of this was that neither the allottees of this stock nor their transferees could make any claim in respect of it. The allottees of this stock, however, never agreed to take shares in the company, and consequently Swinfen-Eady, J., held that it was quite different from a case where persons had agreed to take shares and there being no contract showing the consideration for the shares other than cash those persons would have to pay them in full. In other words, the balance of the preference stock was to be treated as non-existent in the winding up as the issue of it by the company was *ultra vires* and invalid. No question arose as to the fully paid ordinary stock which had been properly converted as it was created in exactly the same circumstances as the 4 per cent. preference

stock above referred to. The half-paid shares were, of course, held entitled to rank in the distribution of the capital, subject to any call for the unpaid balance for the purpose of equalisation. The half-paid stock, however, was held *ultra vires*, and the holders of this stock were not entitled to rank; neither, however, were they liable to pay on the unpaid or any portion of that stock, since it was not a case of persons having agreed to take shares. It was, however, suggested that they might have had a claim for the return of the money paid by them in respect of the stock had such a claim not been barred by the Statutes of Limitation: cf. *Alison's Case*, L.R. 15 Eq. 394, 9 Ch. 1, where it was held that a person allotted and having paid an instalment on shares issued as part of a scheme of an amalgamation that subsequently proved to be *ultra vires* the company issuing the shares, was entitled to a return of the money he had paid in respect of those shares, and that he was never in fact a shareholder at all. It seems, therefore, to be the case that stock may possibly be validly created by issuing it directly in the form of stock, but that the only other way in which it can be done is to comply with the provisions of s. 50. It should, however, be pointed out that the stock issued directly as stock in this case had been issued for a considerable time, and possibly other considerations might arise if the company were to go into liquidation shortly after such an irregular issue of stock. There is, apparently, no difference between stock and shares from the point of view of reducing the capital of a company, which may be done by reducing every holding of stock by a proportionate amount. See *In re House Property & Investment Co.* [1912] W.N. 110, where Neville, J., said there could be no more difficulty in reducing capital by cancelling stock than by cancelling shares.

It appears from this that the differences between stock and shares are that stock may be transferred in payments of the amount of the original shares, and that it can only be created by a conversion of fully paid shares and, *a fortiori*, can never be anything but fully paid. It should be borne in mind, however, that the payments on which it is transferable are frequently of a minimum amount prescribed by the articles, and it would seem that the power to convert into stock would only be of great convenience or advantage where the original shares were of a considerable nominal value, or, possibly, where a reduction of capital has necessarily had the result of reducing the value of each share to an inconvenient and troublesome figure. It is suggested in the note to s. 50 of the Companies Act in "Buckley" that the powers conferred by that section may be exercised contingently, and it therefore would seem likely that it would be possible to convert shares into stock to take effect only if a reduction of capital was confirmed by the court.

Where a conversion of shares into stock is effected, the memorandum must thereafter be in accordance with such alteration, and notice of any such conversion must be given to the registrar in a proper form stamped with a 5s. stamp, as also must notice of any reconversion of stock into shares.

A Conveyancer's Diary.

Estate Duty on Cesser by Death of Discretionary Trusts in favour of a Class, the Trusts continuing in Favour of New Class.

A very important case upon estate duty with reference to which there had been some difference of judicial opinion in the courts below was recently before the House of Lords: *Burrell and Kinnaird* v. *Att.-G.* [1937] A.C. 286.

The provisions of the will under consideration were somewhat elaborate and designed no doubt to evade the payment of estate duty in certain eventualities.

A testator devised all his real estate to trustees in fee simple upon trust out of the net rents and profits to pay to his son H during his life a yearly allowance of such amount from time to time as the trustees should in their discretion think fit, and after his death in trust for his first and other sons successively in tail male. In default of issue of H the estate was settled upon other sons of the testator successively.

The testator declared that if any person who under the foregoing trusts should be an equitable tenant in tail male by purchase should be born in the testator's lifetime, the interest thereinbefore conferred on such person should be excised from his will and in place thereof the trustees should hold the said real estate in trust out of the rents and profits to pay to such person during his life a yearly allowance of such amount from time to time as they should in their discretion think fit, and after his death for his first and other sons successively in tail male.

The testator further declared that it should be lawful for his trustees, instead of paying any such allowance to the person who under the foregoing provisions would be entitled to receive the same, to apply the same for his benefit or for the benefit of any wife or child or remoter issue of his or for the benefit of any person who, if he were dead, would be entitled to receive the net rents and profits of the estate or any allowance thereout, or for the benefit of any two or more of such several objects as the trustees might in their discretion think fit.

The balance of the rents and profits the trustees were empowered to apply in reduction of capital charges.

There was also a power to each person who under the foregoing provisions should become entitled to an allowance to appoint a jointure not exceeding £1,000 per annum to his widow and to charge portions for his younger children not exceeding £10,000 in all.

There were certain other dispositions taking effect upon the failure of the foregoing dispositions.

Subject to all the dispositions aforesaid the testator devised the estate to his own right heirs.

The testator died in 1918. There survived the testator, his said son H (and other sons with whom we are not concerned), the wife of H and three children of H, namely, two sons W and M, and a daughter G.

H died in 1931, leaving him surviving his wife, his three children and a grandchild the child of his daughter G.

Between the death of the testator and the death of H the trustees had paid in respect of H's allowance the whole of the rents and profits except a small sum left in their hands. The greater part of the rents had been paid to H, but there had been substantial sums paid to or applied for the benefit of his wife and each of his three children.

H had duly exercised his power of appointing a jointure of £1,000 a year to his wife and had charged the estate with two portions of £5,000 each in favour of his children M and G, which became payable on his death.

After the death of H, the trustees held the estate upon trust to pay out of the net rents to his son W such an allowance as they thought fit, or to apply such allowance for the benefit of W or his wife or remoter issue, or any person who, if W was dead, would be entitled to the net rents and profits or an allowance thereout and to discharge the portions.

The question before the court was whether the estate passed or was deemed to pass on the death of H for the purpose of estate duty.

The Crown claimed that either (A) the settled estate passed upon the death of the deceased (that is, the testator's son H) under s. 1 of the Finance Act, 1894, or (B) the deceased and the several persons to whom or for whose benefit the trustees were authorised to make payments out of the allowance allocated by them to the deceased had an interest in the settled property extending to the whole income thereof, or, alternatively, extending to 70 per cent. of the whole income, being the whole income less 30 per cent. paid to or for the benefit of the children of the deceased; and that on his death

there accrued or arose by the cesser of the interest of the deceased a benefit equal to the principal value, or, alternatively, to 70 per cent. of the principal value of the settled property; and that in either case the benefit was liable to estate duty under s. 2 (1) (*b*) of the Finance Act, 1894.

It was contended by the trustees that the property did not pass under s. 1 of the Finance Act, 1894, because the whole estate remained throughout in the heir-at-law, except in so far as the trustees in their discretion had decided to distribute it. It was also said that the property could not be deemed to pass under s. 2 (1) (*b*) because there were persons who were members of the group between whom the trustees might distribute the income both before and after the death of H, and there was therefore not deemed to be any passing from one group to another.

For the Crown it was said that the interest of the heir-at-law was so remote as to be negligible, and that such interest should be ignored, and further that, notwithstanding that there were persons who were members of the class amongst whom the trustees might distribute the income both before and after the death of H, there was a passing from one class to another.

It will be convenient here to see what difference the death of H made in fact.

Immediately before that event the persons who were the objects of the discretionary trust of the income, and amongst whom the whole income might be distributed, were primarily H himself as an allowancer, and secondarily, by way of substitution in respect of that allowance, a class consisting of H, his wife, his three children W, M and G, and the child of G. During the life of H no one else could take any share in the income.

Immediately after the death of H, the persons were, primarily, W as the allowancer and secondarily, by way of substitution in respect of that allowance, a class consisting of W, his wife and his brother M, so long as no son was born to W.

It will be seen therefore that W was a member of both groups or classes and so also was M for a time, that is until a son was born to W (which in fact subsequently happened), when M dropped out, but if the son of W died, M would become a member of the class again. It is to be remarked, however, that M was a member of the first class as a son of H, but of the second class in a different capacity, namely, as the person who, for the time being, would have been entitled as an allowancer if W had been dead.

In that state of things, Finlay, J., held, in the Court below, that the whole estate had passed, on the death of H, under s. 1 of the Finance Act, 1894, and made an order containing a declaration to that effect.

On appeal, Lord Hanworth, M.R., and Maugham, L.J., held that the property did not pass under s. 1, but must be deemed to pass under s. 2 (1) (*b*) of the Act. Romer, L.J., on the other hand, agreed with Finlay, J., that the property passed under s. 1. The difference of opinion made no difference in the result, for all the members of the court held that estate duty was payable upon the value of the whole estate. The Court of Appeal, however (by a majority), varied the order made by Finlay, J.

The judgment in the House of Lords was delivered by Lord Russell of Killowen.

His lordship, after stating the facts, disposed of the contention that there was no passing by reason of the interest of the testator's heir-at-law, which was not affected by the death of H. His lordship held that such interest was "so minute and so remote that it may for our present purpose be ignored."

In his speech, Lord Russell went very fully into the matter, and I think that the following extract from it shows the grounds upon which the decision of the House was based. After examining the question of the different groups of persons beneficially interested in the income before and after the death of H, the learned lord said "It is said that the fact that certain individuals were members of both groups shows that part of the beneficial interest in the property resided in the same individuals immediately before and immediately after H's death, and that therefore it is impossible to say that there was on H's death a change of title in the property as a whole, and that therefore there was no passing under s. 1. I do not agree. The mere fact that a person who becomes entitled to the beneficial enjoyment of property on a death has already before that death been beneficially interested in the property does not prevent the property passing under s. 1." In support of that, his lordship referred to *Earl Cowley* v. *Inland Revenue Commissioners* [1899] A.C. 198, and *De Trafford* v. *Attorney-General* [1935] A.C. 280. His lordship continued: "In the present case the beneficial interest of the first group ended with H's death, and, thereupon, the beneficial interest of the second group arose under a different trust; and so too as to each member of the first group, his interest as a member of that group ended with H's death, and if (but only if) he fulfilled the qualification required for membership of the second group, a new and different beneficial interest then arose in him under a different trust. And that this was a different interest is shown in the case of M by the fact that whereas his interest during H's life was indefeasible, except by his own death, his interest during W's life was precarious and would cease if and so long as there was in existence a son of W."

His lordship therefore held that the whole estate passed on the death of H, and the order made by Finlay, J., was restored.

So, another ingenious attempt to evade payment of estate duty failed.

Landlord and Tenant Notebook.

Specific Performance of Short Term Agreements.

THE question whether the length of the agreed term is relevant to the exercise of the judicial discretion to grant or refuse specific performance of an agreement for a tenancy or lease is perhaps less likely to assume practical importance since the abolition of the doctrine of *interesse termini* by L.P.A., 1925, s. 149. But even if no case should arise again in which an intending tenant under a short term agreement should require a decree of this nature, the position is worth examining, as the authorities shed much light on the principles which govern the exercise of the discretion.

At one time it appears to have been thought that something like the principle expressed by the maxim "*De minimis non curat lex*" would militate against the granting of a decree in these cases. This view was, I believe, largely inspired by a somewhat misleading headnote to the case of *Clayton* v. *Illingworth* (1853), 10 Hare 451. The plaintiff in that action produced a memorandum by which the defendant's agent had agreed to let him a farm from a specified date (*in futuro*), rent to be payable half-yearly, on the terms of another agreement with some person deceased; and the plaintiff was to bear the expense of the agreement to be made. Vice-Chancellor Wood observed that a lease under seal for a yearly letting was unusual; that the reference to the agreement with the deceased person could be explained by the fact that the plaintiff was negotiating with an agent and not with the landlord himself; and that law (as opposed to equity) gave the plaintiff an adequate remedy, for he could sue at law and prove his case by means of the agreement cited in the memorandum. The headnote, which states that the court refused to enforce specific performance of an agreement for a mere tenancy from year to year, misses the *ratio decidendi*.

In *De Brassac* v. *Martyn* (1863), 11 W.R. 1020, decided by the same Vice-Chancellor, the plaintiff was a member of the French Commission attending the Great Exhibition, and had agreed to take a house in Thurloe Square from 1st February—15th September, 1862, in consideration of three payments, the second of which was to be made on his taking possession. On the 1st February the plaintiff was still in France, conducting an election campaign, and on his agent failing to produce the money possession was refused by the defendant "with some warmth." Negotiations followed but broke down; on the 25th March (the plaintiff having lost the election contest) the bill was filed, and at about the same time the plaintiff took the house opposite the one he had agreed to take. The learned Vice-Chancellor held that as time was not of the essence, the plaintiff was in the right, and could claim the return of his first payment; but the date of the hearing being the 14th July, 1863, it is not surprising that no decree for specific performance was granted. It was pointed out that the plaintiff, had he really wanted specific performance, could have asked for the date of the trial to be advanced.

A fleeting reference to the question was made in *Lavery* v. *Pursell* (1888), 39 Ch. D. 508, in which a contract for the sale of building materials which were still a house, was held unenforceable owing to the absence of any writing sufficiently describing the vendor. In the course of his judgment, Chitty, J., said that the Court of Chancery would not grant specific performance of an agreement for a holding from year to year, and assigned two reasons: damages were the best way of dealing with such matters, and in ordinary course a party could not get a trial and decree within a year.

Next, in *Glasse* v. *Woolgar* (1897), 41 Sol. J. 508; 573 C.A., a plaintiff who had taken, for one day, rooms from which the Diamond Jubilee procession would be visible asked for an injunction when the defendants repudiated the agreement, fearing that they would incur a forfeiture of their own lease. North, J., refused the application on the ground that it was not shown that other rooms were not obtainable; in the Court of Appeal, however, the judgments of Lindley and Chitty, L.JJ., do read as if based partly on the proposition that the shortness of the term itself was a reason for refusal.

But while in all the above cases the relief was refused, it must be remembered that he who seeks specific performance has to prove not only a contract, but also to show that damages would not compensate him. Now the statement of facts in *Clayton* v. *Illingworth* does not suggest that the plaintiff or the farm had any special characteristics which made the latter particularly suitable for the former. The aggrieved party in *De Brassac* v. *Martyn* had actually secured alternative accommodation, and I believe I am right in saying that one Thurloe Square house is much like another. In *Glasse* v. *Woolgar* the plaintiff complained that the defendants' breach made it impossible for him to keep contracts with other persons to whom he had let accommodation, but the view taken by the judge at first instance, that he could claim damages sufficient to meet claims so made against him, was upheld by the Court of Appeal.

Thus Byrne, J., analysing the position when trying *Lever* v. *Koffler* [1901] 1 Ch. 543, was able to distinguish *Clayton* v. *Illingworth* and followed *De Brassac* v. *Martyn*. The claim was by an intending tenant who had accepted a written offer made in April, 1900, of an annual tenancy to commence at Midsummer, the offer providing for compensation if the landlord should determine the tenancy at the end of the second year. While this, his lordship observed, would not be a tenancy from year to year, it was wrong to consider that *Clayton* v. *Illingworth* decided that specific performance would not be granted in the case of a yearly agreement; what was decided was that the agreement was already in existence. While *De Brassac* v. *Martyn* recognised a right to specific performance in the case of an even shorter term. And the decree was granted.

In the following year the point was raised in *Manchester Brewery Co.* v. *Coombs* [1901] 2 Ch. 608, when assignees of the reversion to licensed premises succeeded in enforcing a covenant made with the grantor, who had never executed the agreement. The defendant had occupied under that agreement which was for a yearly tenancy and provided that he should buy beer from the landlord only, and he had executed under seal. The plaintiffs, Farwell, J., pointed out, would be entitled to specific performance (compelling acceptance of a lease) by virtue of the part performance; the reasons given by Wood, V.-C., when refusing a decree in the case of a similar term in *Clayton* v. *Illingworth* were inapplicable, for in that case where was nothing to show that a lease under seal was contemplated. The defendant here was pleading that the plaintiffs had no remedy in law, and the plaintiffs could answer that they were entitled to specific performance.

Our County Court Letter.

MOTOR ACCIDENT AS ANTE-NUPTIAL TORT.

In a recent case at Leicester County Court (*Sarson* v. *Barwell; Sarson*, third party) the claim was for damages for negligence. The plaintiff's case was that in July, 1936, she was riding pillion on a motorcycle driven by her then fiancé, whom she had since married. The cyclist swerved to avoid an omnibus, driven by the defendant out of a side road, and the plaintiff was thrown and injured. The defendant denied negligence, and his case was that he had been overtaken by the cyclist, who (being the person really responsible for the accident) was joined as third party. The third party denied liability on the ground that he was now the husband of the plaintiff. His Honour Judge Galbraith, K.C., held that the defendant had not displayed the necessary degree of caution and care, although the motorcyclist should have taken greater care before overtaking an omnibus travelling along the middle of the road. Both were therefore guilty of negligence, but the claim against the third party was barred. Judgment was given for the plaintiff against the defendant, for £50 and costs, and in favour of the third party against the defendant. The defendant, however, was granted part costs against the third party. It is to be noted that in *Gottliffe* v. *Edelston* (1930), 74 Sol. J. 567, a wife was held not entitled to sue her husband in respect of an injury sustained by her, before marriage, while riding as a passenger in a car negligently driven by the defendant. The right of action, which accrued while the plaintiff was single, did not become her separate property, after marriage, within the meaning of the Married Women's Property Act, 1882, s. 12. Mr. Justice McCardie held that the action was barred by the general disability of husband and wife to sue each other in tort, and judgment was, therefore, given for the defendant.

WIFE'S SEPARATE PROPERTY.

In the recent case of *Horwood* v. *Horwood*, at Oxford County Court, the claim was for (1) a declaration that No. 1 Beaumont Road was the applicant's property, (2) an injunction to restrain her husband, the respondent, from entering the property, (3) 15s. damages. The parties were married in 1918, and the applicant had earned her own living by taking in laundry work. In 1925 the house was bought for £75, and the conveyance was in the name of the applicant, who had saved from £20 to £30 and had borrowed another £30. The respondent gave her £10 towards the cost of the house, but she had helped him to the amount of £75 in three years in respect of legal expenses. In 1925/26 she had paid for the material for some sheds, and the respondent had merely done the construction work. A separation occurred in 1936, when the respondent claimed the property for the first time. On the 6th February, 1937,

the respondent broke in through a window, and damaged the property to the amount claimed. The respondent's case was that he withdrew £39 from the Post Office Savings Bank and borrowed another £35 towards the cost of the house. Although the respondent found the money, the deeds were put in his wife's name, as a creditor was pressing him, and it was desired to protect the house. On production of the Savings Bank book, however, the withdrawal was shown as £12 and not £39, as alleged. His Honour Judge Cotes-Preedy, K.C., gave judgment for the plaintiff, as asked, with costs.

THE QUALITY OF APPLES.

In *Deverson* v. *F. C. Bradley and Sons, Ltd.*, recently heard at Canterbury County Court, the claim was for £26 4s. 1d. as damages for breach of contract. The plaintiff's case was that on the 28th November, 1936, the defendants' representative inspected a sample of Bramley Seedling apples, and agreed in writing to buy 10 tons at £5 5s. a ton, delivery to be taken in part when 5 tons were ready. On the 11th December the defendants were notified that 250 bushels were ready, but no reply was received to the letter, nor to one sent on the 18th December. On the 28th December the plaintiff wrote that the apples would not improve with keeping in baskets, and, on the 9th January, trucks arrived to clear all apples, which had then been a month in baskets. On the 11th January the defendants stated that 5 cwts. were bad, but they rejected the whole 5 tons. On the 13th January the defendants wrote that the apples did not conform to the contract, and the other 5 tons would be inspected when ready. The apples were, in the meantime, sold by the plaintiff at Covent Garden, at a loss of £23 4s. 1d., to which was added £3 paid to the railway company for demurrage. The defendants' case was that there was an oral stipulation that the apples should be free from spots, blemishes or cracks, as they were wanted for export. The latter circumstance was shown by the price, viz., 2s. 1d. per bushel, which was a high price for the home market. The fruit was found to be badly blemished and scabbed, but the defendants were nevertheless prepared to accept the apples, if taken out of the truck and re-graded. The plaintiff declined to do this, and the contract was then rescinded by mutual consent. Corroborative evidence was given that about 20 per cent. of the apples were undersized, and some were covered with sooty blotch. His Honour Judge Clements held that the plaintiff had not delivered 10 tons of apples up to the required standard. Judgment was therefore given for the defendants, with costs.

Land and Estate Topics.

By J. A. MORAN.

The auctioneer's hammer, for purely obvious reasons, has been having quite a long rest. The renewal of activities, however, is only a matter of a few days, as we are promised some very interesting auctions before the end of the month. There is likely to be no lack of competitors, from the man with very limited capital, to the big syndicate that has years of practical experience behind it.

My congratulations to the College of Estate Management; nothing seems to stem the tide of success that has crowned the efforts of Mr. Adkin and his capable assistants ever since the well-known scholastic institution came into being. All the prizes awarded at the Land Agents' Society examinations, the results of which have just been published, were gained by College students; and the result of the recent examinations of the Auctioneers' and Estate Agents' Institute showed that the College gained the following distinctions:—Final Examination: First place and Institution Prize, Valuation prize, and eleven out of seventeen Honours. In the Intermediate Examination, thirty out of forty-nine Honours went to the credit of its pupils.

It was mentioned in the Report read at the annual meeting of the Auctioneers' and Estate Agents' Institute, just held, that the membership was as follows: Honorary Members, eighteen; Honorary Fellows, six; Fellows, 3,523; Associates, 1,480; Licentiates, 1,119; Students, 715; Total, 6,861. General regret was expressed at the fact that it was the last annual report which would appear over the signature of Mr. E. H. Blake, as Secretary.

The Institute is very happy in its choice of Presidents. Mr. E. W. Eason, who upheld and enhanced the dignity of the office during the Jubilee Year, is succeeded by Mr. H. G. Alexander, partner in a very old and leading firm in Cardiff. The new President is a man of many activities. He is a Justice of the Peace for the County of Glamorgan and a Member of the Council of the Royal Agricultural Society of England and the Bath and West and Southern Counties Agricultural Society. In the realm of sport he has excellent credentials; at cricket he has played for Glamorgan, and at Rugby he was first reserve for Wales on several occasions.

"Written in Lots" was the title of a Paper read by Mr. F. John N. Brackett at the Rotary Club in Tunbridge Wells. The variety of articles sold under the hammer is, as Mr. Brackett, who happens to be a son of a popular past-President of the Auctioneers' Institute, pointed out, astonishing, but I was not prepared for his claim to have offered for sale a human head cut from the body of a South American native. Hearing that there was a good market for these heads in days gone by, an explorer paid a visit to the district where business was brisk, with a view to purchasing a quantity. The result was that his own head was included in the next consignment for England!

If the defendant who wrote to Mr. Registrar Friend, at Clerkenwell, is not mistaken, he is well on the road to fortune. True, all that he has in the way of worldly goods is a little bit of property; not the kind of thing that takes a back seat at the London Auction Mart, but a small cottage with a "mirage" on it!

The claim made by the Ecclesiastical Commissioners to be good landlords is supported by the report of a survey made for the Housing Association of the Church Union on some of the London properties of the Ecclesiastical Commission by Miss Marion FitzGerald. There have been fairly frequent criticisms of the Church as a landlord, but Miss FitzGerald's report shows very clearly that it is not directly responsible for the condition of many of the houses of which it is ground landlord.

The week-end country cottage is being considered by a Sub-Committee of the Royal Institute of British Architects. It is gathering information about cottages within easy distance of large towns so that when the local surveyor decides on demolition, steps should be taken to see if, by some repairing, a cottage could not be made fit for the urban dweller's holiday.

By the way, the compulsory demolition of property has its humour as well as its pathos. A ninety-nine-year old owner of some Clifton property that it was proposed to demolish was interviewed by the local Housing Committee a few days ago. Said he: "I'm ninety-nine years old, and I don't want to do any unnecessary work at my time of life, so I have brought my boy along to listen, and to make notes of." When the son went into the witness-box, he gave his age as seventy-seven.

Mr. Augustus Conway Samson, solicitor, of Southampton, left estate of the gross value of £9,480, with net personalty £9,451. He left £100 to the Royal South Hants and Southampton Hospital; £150 to the vicar and churchwardens of St. Michael and All Angels, Southampton, and £150 to the vicar and churchwardens of St. Matthew, Newcastle-upon-Tyne.

POINTS IN PRACTICE.

Questions from Solicitors who are Registered Annual Subscribers only are answered, and without charge, on the understanding that neither the Proprietors nor the Editor, nor any member of the Staff, are responsible for the correctness of the replies given or for any steps taken in consequence thereof. All questions must be typewritten (in duplicate), addressed to the Editorial Department, 29-31, Breams Buildings, E.C.4, and contain the name and address of the Subscriber. In matters of urgency answers will be forwarded by post if a stamped addressed envelope is enclosed.

Solicitor - Trustee — CHARGING POWER GIVEN TO HIM NOMINATIM — WHETHER SUBSEQUENT SOLICITOR-TRUSTEES CAN CHARGE FOR SERVICES.

Q. 3433. T's will contains the following clause as to the appointment and remuneration of executors and trustees: "I appoint A and B to be the executors and trustees of this my will and I give the sum of £20 to the said A provided that he acts as one of the executors and trustees of this my will, and I direct that the said B shall be entitled to charge and to be paid for all work done by him in connection with the proving of this my will and the carrying out of the trusts herein contained in his capacity as a Solicitor in the same way as if he had not been appointed an Executor and Trustee thereof." "A" renounced probate and subsequently died. "B," who was a solicitor, proved the will and continued to act as trustee until his death, when his executor appoints two new trustees of "T's" will, as the trusts of the will are still subsisting. Both these new trustees are solicitors, and your opinion is asked whether the above quoted charging clause enures for their benefit as trustees of "T's" will, or whether such clause is restricted so as to apply only to "B" personally.

A. We have failed to trace any authority upon this point. We express the opinion, however, that the power to charge was personal to B and cannot be enjoyed by the new solicitor-trustees. We form this opinion (I) because the power to charge is contrasted in the will with the cash legacy to A; (II) because the power to charge constitutes a variation of the general law and would thus presumably be construed strictly, and (III) because it cannot have been in the contemplation of T that subsequent trustees would be solicitors. We do not think that T. A., 1925, s. 18 (even if it by implication confers powers on the trustees or trustee for the time being) is in point.

Secret Trust—DIVESTMENT UNDER L. P. A., 1925, Sched. I, Pt. II, para. 3—CONVEYANCE TO BENEFICIARY—STAMP.

Q. 3434. On the 8th April, 1924, certain land was conveyed to G.S.B. by W.H.F. The consideration was £62 10s. and was expressed to be paid by the purchaser. Subsequently, a house was erected on the land at a cost of about £800.

As a matter of fact, neither the purchase money for the land nor the cost of the house was provided by G.S.B., but the whole of the money was furnished by the mother of the wife of G.S.B., being in the nature of a gift by the mother to her daughter. The mother died some years ago. Since the house was erected, G.S.B. has mortgaged it on two or three occasions, of course in his own name, but the house is now clear of any mortgage. The wife of G.S.B. would now like the house made over into her own name, and G.S.B. is quite prepared to do anything that is necessary as he appreciates that the house and land is his wife's property. Having regard to the time which has elapsed since the purchase of the land and to the fact that the house has been mortgaged by G.S.B. in his own name, can a conveyance attracting only a ten shilling stamp now be executed by G.S.B. to his wife, or will the conveyance have to be in the form of a deed of gift from G.S.B. to his wife on which *ad valorem* duty will have to be paid?

A. If the husband was, in fact, a secret trustee for his wife, then he was divested by L. P. A., 1925, Sched. I, Pt. II, paras 3 and 6 (*d*), and his mortgages took effect by virtue of L. P. (Amend.) A., 1926, Sched., amendment of L. P. A., 1925, Sched. I, Pt. II, para. 3. We think that the house can properly be assured to the wife on a ten shilling deed stamp. We suggest it should be assured by a conveyance reciting the facts and the mortgages, the latter being explained as made for the benefit of the wife under the above power. It would be prudent to have the stamp adjudicated, and to be satisfied as to the *bonâ fides* of the proposed transaction.

Middlesex Registry—SEARCHES.

Q. 3435. As the Land Registration Act, 1936, provides for the compulsory registration only on *sale* of land in Middlesex, the position concerning other transactions after the commencement of the Act where no change of ownership is involved does not seem clear, having regard to the fact that no further registrations in the Middlesex Registry are possible.

A continuance of official searches in that Registry is apparently provided for by the Act and yet it is obvious that such searches cannot reveal the transactions referred to above. Should they still be made, or can reliance be placed on the Land Charges searches alone?

A. Searches must certainly still be made in the Registry because the effect of registration or non-registration before the "appointed day" (1st January, 1937) is not affected by the Land Registration Act, 1936. Section 2 (3) allows two years for registration of instruments made before the "appointed day" and the search would disclose these besides registrations before that day. Puisne mortgages of land in Middlesex will now be registered as land charges, class C (i) instead of in the Middlesex Registry. Probates, mortgages protected by deposit of title deeds, vesting assents, etc., will no longer be registered at all. No personal searches in the register are now permitted. Search should also be made in the index map at the Land Registry for cautions against first registration and priority notices.

Landlord and Tenant Act, 1927.

Q. 3436. A is the tenant of a house carrying on a business at the same address. He later purchases the property and continues to carry on the business there for a period of eleven years. A then sells the goodwill of such business to B, giving him a lease of the property for three years. In course of time B serves a notice under s. 4 (1) of the Landlord and Tenant Act, 1927, demanding compensation for goodwill. Under such section it is necessary that the tenant or his predecessors in title should have carried on the business for a period of not less than five years. B claims that his predecessor in title is A. It is argued on behalf of A that B cannot claim compensation in respect of an increased letting value which had accrued during A's occupation, and that B does not conform to the provisions of s. 4 (1) under which he claims. Has B a good claim for compensation for goodwill, and can he support a claim to A being his predecessor in title?

A. The expression "predecessor in title" is defined in the Landlord and Tenant Act, 1927, s. 25 (1), as a person through whom the tenant . . . has derived title, whether by assignment, by will, by intestacy or by operation of law. There are thus four ways in which a claimant for compensation may derive title, but a grant of a tenancy from the landlord direct (as in the present case) is not one of them. B in fact, in the

present case, had no predecessor in title, as his lease was an original grant from the freeholder or long leaseholder. As B has not carried on the business for five years, he cannot support a claim for compensation for goodwill.

Appropriation — INFANT — LIABILITY OF PARENT WHO CONSENTS TO THE APPROPRIATION OF UNAUTHORISED SECURITIES UNDER A. OF E.A., 1925, S. 41.

Q. 3437. The executors of a deceased testator wish to appropriate unauthorised securities in satisfaction of contingent legacies payable to minor children under the will of the testator, and have asked the parents to assent in accordance with s. 41 of the A. of E.A., 1925. Can the parents be held accountable by the children for any loss of capital which may be suffered by reason of this assent. I am unable to find any authority and shall be glad of your opinion.

A. We know of no authority upon the point. Emmet's "Notes on Perusing Titles," 12th ed., vol. 2, p. 510, suggests that "it would also be better not to agree to an appropriation unless it is a trustee's security, or such security is authorised by the terms of the will, when there is one." We doubt, however, whether a parent would be held liable who exercised his discretion and acted *bonâ fide*.

Surviving Trustee UPON THE STATUTORY TRUSTS INSANE —POSITION—SALE.

Q. 3438. Prior to 1st January, 1926, A and B were entitled as tenants in common to freehold property which after that date became vested in them, by virtue of the transitional provisions of the L.P.A., 1925, as joint tenants upon the statutory trusts. A died in 1929 and by her will bequeathed her interest in the land to B and C in equal shares. B is now a lunatic and C has been appointed receiver. C wishes to sell the property or alternatively to grant a lease containing an option to purchase on the part of the lessee. Can C sell the property or grant a lease without a second trustee being appointed? Please quote authorities. If a second trustee has to be appointed can you suggest a precedent? Would the position be any different if A had died intestate?

A. C is not in a position to deal with the property; see L.P.A., 1925, s. 22 (2). Two new trustees should be appointed, and application must be made to a Master in Lunacy for leave for C to exercise the statutory power of appointment on behalf of B (Lunacy Act, 1890, ss. 128 and 129; *Re Shortridge* [1895] 1 Ch. 278, A.C.). Had A died intestate it would not materially have affected the position.

Whether a "Class C" House remains De-controlled if Owner in possession.

Q. 3439. We should be very greatly obliged if you could assist us with a point which has arisen under the de-control provisions of the Rent Restrictions Acts, namely, whether a Class C house (in the country and rateable value not exceeding £13) is controlled or de-controlled where the landlord is in actual occupation at the commencement of the 1933 Act on 18th July, 1933, and has not registered the house as de-controlled. As we understand s. 2 (1) of the 1933 Act, s. 2 of the 1923 Act was repealed in regard to houses (in the country) where the rateable value did not exceed £13, but such repeal did not apply to a dwelling-house which was "let" immediately before the passing of the 1933 Act, provided that the landlord registered it as de-controlled. It seems obvious that where a Class C house was not "let" on 18th July, 1933, the registration provisions did not apply to it, but supposing that a landlord was in actual occupation on 18th July, 1933, but subsequently ceases to occupy and lets the house, is the house de-controlled or not, and does subsequent sale by the 1933 owner affect the position? "Wilkinson's Guide to the Rent Restrictions Act," 5th ed., p. 34, states that where the owner of a Class C house is in occupation thereof at the date of the passing of the 1933 Act it will remain de-controlled, and that it will not be necessary for the owner to register with a local authority. We cannot quite follow, however, how this comes about, as, although registration is not possible, yet s. 2 (1) of the 1933 Act seems to bring about control.

A. If the landlord was in possession of the house immediately before the passing of the Rent and Mortgage Interest Restrictions (Amendment) Act, 1933, the house remained de-controlled under s. 2 (1) of the Act of 1923. In order that s. 2 (2) of the Act of 1933 may apply, the house must have been "let as a separate dwelling" immediately before the passing of the Act. If the house was not "let" at that date, it would not come within the provisions of the sub-section. This sub-section does not re-control a house which was de-controlled before that date where the owner was in possession when the Act was passed. The house remains de-controlled, and would not become re-controlled if subsequently let. There is no reported case on the question.

Will—DEVISE OF REAL ESTATE IN UNDIVIDED SHARES SUBJECT TO ANNUITIES—POSITION—SALE.

Q. 3440. By his will which came into operation in 1936 J.R. appointed K.R. and T.R. to be his executors, but did not appoint any trustees for the purposes of the S.L.A., 1925, or otherwise. He devised his freehold farm known as Roseacre subject and charged as thereinafter mentioned unto E.R. and the said T.R. absolutely in equal shares as tenants in common. By a later clause he charged Roseacre with three annuities. Probate was duly granted to K.R. and T.R. The questions now arising are: (I) Does the charge of annuities upon the land make it settled land? (II) If not, there must necessarily be a trust for sale. Are the annuities then charged upon the entirety or do they take effect behind the trust for sale? (III) Will a sale by the trustees for sale overreach the annuities? Having regard to s. 34 (3) of the L.P.A., 1925, and s. 36 (4) of the S.L.A., 1925, it is apprehended that the effect of the will is to vest Roseacre in K.R. and T.R. the executors as trustees for sale upon the statutory trusts and the annuity would apparently be charged upon the proceeds of sale.

A. We think it is clear that the land is settled by reason of the charge of the annuities (S.L.A., 1925, s. 1 (1) (v)). Accordingly a sale must be effected by way of the machinery of S.L.A., 1925; that is to say, the executors must execute a vesting assent in their own favour (S.L.A., 1925, ss. 6 and 23), and then proceed to sell under the powers of the S.L.A., 1925. The executors are the trustees for the purposes of the Act (s. 30 (3)). No one of the annuitants nor all of them jointly is or constitute a tenant for life (*Re Bird*, *Watson* v. *Newnes*, 70 SOL. J. 1139; [1927] 1 Ch. 210). The conveyance will override the annuities (S.L.A., 1925, s. 72). The position provided for by S.L.A., 1925, s. 36, will not arise until the cesser of all the annuities.

Dividends on Preference Shares.

Q. 3441. The memorandum of a limited company states that the share capital is divided into preference shares and ordinary shares, and that the preference shares shall be entitled to be paid out of the profits of each year in priority to all other dividends a fixed dividend for that year at the rate of 5 per cent., while the company's articles state that the net profits of the company shall be applied (*inter alia*) first in paying to the holders of preference shares a cumulative preferential dividend at the rate of 5 per cent. Our construction of these two provisions is that the dividends on the preference shares are cumulative. We shall be glad to know if we are correct.

A. The preference shares are cumulative. There is no conflict or inconsistency between the memorandum and the articles. The latter amplify the memorandum, and are not impliedly limited in their scope by any omission in the memorandum to define the full rights of the preference shares. The questioners are therefore correct in their construction of the provisions.

To-day and Yesterday.

LEGAL CALENDAR.

17 MAY.—Here is the epitaph of Sir William Cordell, Master of the Rolls, who died at the Rolls House on the 17th May, 1581 :—

" Here William Cordell doth in rest remain,
Great by his birth, but greater by his brain.
Plying his studies hard his youth throughout
Of causes he became a pleader stout.
His learning deep such eloquence did vent
He was chose Speaker of the Parliament.
Afterwards Knight, Queen Mary did him make
And Counsellor, State work to undertake,
And Master of the Rolls. Well worn with age
Dying in Christ, Heaven was his utmost stage.

18 MAY.—On the 18th May, 1836, at the Assizes at Riom, in the Puy de Dôme, there closed the trial of M. de Vandegre, charged with murdering his own son. Country gentleman and autocratic father, he had strongly disapproved of a match that the young man had arranged for himself, considering it degrading to his family. Both the parish priest and the local attorney had heard him use violent language, threatening his life, and when one night, shortly after having left his fiancée's house, the son was shot dead, instant suspicion fell on the father. Much to the discontent of the district, he was acquitted.

19 MAY.—On the 19th May, 1750, Mr. Justice Abney died of gaol fever, contracted at the Old Bailey during the Black Sessions.

20 MAY.—On the 20th May, 1779, James Mathison was convicted at the Old Bailey of forging Bank of England notes, earning the tribute that " there perhaps never appeared in any court of justice so capital nor so ingenious a man in his style as this prisoner. He had reigned longer in his villainy and had executed it with more dexterity than any that probably ever preceded him." His imitation watermarks deceived even paper-makers, and cashiers could not tell their own signatures from his forgeries. He would never have been convicted had he not lost his head when detained for examination, first trying to escape and afterwards confessing. He was, of course, hanged.

21 MAY.—On the 21st May, 1801, King George III arrived at Buckingham House from Kew, after recovering from one of his mental derangements. " After his Majesty had taken some refreshment, a privy council was held at which Sir Richard Pepper Arden kissed hands on being appointed Lord Chief Justice of the Common Pleas, as did also Sir William Grant on succeeding to the situation of Master of the Rolls."

22 MAY.—When young George Jeffreys, afterwards the much maligned Chief Justice, was on the threshold of his career, he determined to marry an heiress, and the handsome young man had no difficulty in gaining the favour of the daughter of a City alderman reputed to have an enormous fortune for her portion. A penniless and beautiful girl, a poor relation of the family, who was employed as companion to her wealthy cousin, acted as go-between, and when the merchant prince discovered that his child was in danger of marrying a man with no means but his talents, he vented his wrath on the innocent intermediary and turned her out of doors. Then Jeffreys made a charming and generous gesture. On the 22nd May, 1667, he married her and a very happy match it proved.

23 MAY.—On the 23rd May, 1798, Lord Clonmel, Chief Justice of the King's Bench in Ireland, died after fourteen years' service. It was by sheer energy and ability that he had raised himself, serving the government while at the Bar with all the desperate devotion of a careerist. On the Bench he was overbearing and passionate.

THE WEEK'S PERSONALITY.

There is a flowery tribute to the memory of Mr. Justice Abney after his tragic death :—

" Yes, 'tis a glorious thought ! The worthy mind
Matured by wisdom and from vice refined
Must, sure, divested of its kindred clay,
Soar to the regions of empyreal day.
Such Abney shone to deck whose mournful hearse
The muse lamenting pays her grateful verse.
How has she oft with fixed attention hung
On the great truths that graced his flowing tongue ;
Truths that he joyed with candid warmth to draw
Fair from the moral or the Christian law.
For him we hoped kind temperance long would wield
Her arms and o'er him spread her guardian shield.
Fallacious hopes ! Ah ! see the dire disease
Comes borne insidious on the tainted breeze.
The fev'rous pest victorious wins its way
Till spent, o'erpowered by its resistless sway
Frail nature yields. O ! parent, husband, friend,
Must there the endearing names for ever end ? "

No. The readers must :—

" With mortal eyes his radient course explore,
and view him landed on the eternal shore,
Where the Great Judge determines every cause
And blesses as he gives the just applause."

A JUDGE MURDERED.

The recent assassination of Judge O'Neil in New York adds another name to the extraordinary short list of judicial personages who have fallen to the murderer's stroke. It is as inexplicable as gratifying that men who spend their days meting out death, prison and corporal punishment to the criminal classes should as a body be almost immune from vengeance. In England we have been singularly fortunate in this respect, for though the lives of both Jessel, M.R., and Judge Parry were attempted in relatively recent times, no judge has been murdered on our soil since Cavendish, C.J., was killed by the revolutionary mob of Wat Tyler. In this respect even Ireland has a pretty clean record, despite the scandalous judicial appointments at the beginning of the last century. When the Irish did murder a judge, it was, with remarkable inconsequence, one of the most humane and honourable men on the Bench, Lord Chief Justice Kilwarden. On the evening of Emmet's abortive rising in 1803, he was unfortunately driving through Dublin when the insurgent mob surrounded his carriage and to the fury of their leader despatched him.

SCOTTISH VENGEANCE.

Scottish justice has one judicial martyr in the person of Sir George Lockhart, Lord President of the Court of Session, who was shot dead in 1689 while returning from church. His assailant was an aggrieved litigant against whom a judgment had been given to pay an aliment of 1,700 marks to his wife and children. The ball struck him in the back and passed right through his body, killing him almost immediately. The murderer did not attempt to fly, but declaring openly that he had done the deed, allowed himself to be arrested. Caledonian justice was stern and wild in those days, and when on the morrow the prisoner was brought up before the Lord Provost for examination, the Estates of Parliament, having regard to the supplications of the friends of the deceased, granted a warrant to the magistrates of Edinburgh to torture the prisoner. This was done and he judicially confessed his crime and was condemned to have his right hand struck off and to be hanged on a gibbet with the fatal pistol which he had used about his neck.

Notes of Cases.

Appeals from County Courts.

Martin *v.* Finch.

Slesser and Romer, L.JJ., and Luxmoore, J.
12th and 13th April, 1937.

WORKMEN'S COMPENSATION—WORKMAN SUBJECT TO EPILEPSY—RIDING BICYCLE—EMPLOYER'S SERVICE—FALL AS RESULT OF FIT—DEATH—WHETHER ARISING OUT OF EMPLOYMENT.

Appeal from Worcester County Court.

A land drainer employed at a farm four miles from his dwelling cycled to and from his work. He suffered from epileptic fits to the knowledge of his employer and had had several falls from his bicycle, which he continued to use, despite his doctor's warning. If he had to work at any distance from the farm, his employer frequently told him to use his bicycle to carry his tools. On the 1st April, 1936, he instructed him to leave his work half an hour earlier than usual to carry certain tools to a field where he was to work next day. On the way there he had an epileptic fit and fell off his bicycle, sustaining fatal injuries. The learned county court judge awarded his widow compensation.

SLESSER, L.J., dismissing the employer's appeal, referred to *Wicks* v. *Dowell & Co., Ltd.* [1905] 2 K.B. 225, at p. 229, *Dennis* v. *A. J. White & Co.* [1917] A.C. 479, at p. 283, and *Lander* v. *British United Shoe Machinery Co., Ltd.*, 26 B.W.C.C. 411, and said that the question was whether the man was called on to suffer, hazard or do something which caused his death. He was called on to hazard something other than what was common to all mankind. Being an epileptic, he was called on to ride a bicycle on his employer's business, in his employer's hours. If he had met with an accident by being run into by a vehicle, or through his machine being at fault in some of its functions, or through its skidding, it could not have been said that the accident did not arise in the course of his employment. Here there was an added risk by reason of the man's tendency to epilepsy. There was no difference between his losing control of his bicycle and falling and the case of a wheel coming off.

ROMER, L.J., and LUXMOORE, J., agreed.

COUNSEL: *Sellers*, K.C., and *R. H. Norris*; *Carthew*, K.C., and *K. S. Wood*.

SOLICITORS: *Berrymans*, for *Eustace Roberts*, of Worcester; *Shaw, Son & Clark*, for *Gordon Bancks*, of Pershore.

[Reported by FRANCIS H. COWPER, Esq., Barrister-at-Law.]

Rogers *v.* Booth.

Greene, M.R., Romer and Scott, L.JJ.
3rd May, 1937.

WORKMEN'S COMPENSATION—SALVATION ARMY OFFICER—INJURY IN COURSE OF DUTIES—RELATIONSHIP BETWEEN OFFICER AND ARMY—WHETHER ENTITLED TO COMPENSATION.

Appeal from the Mayor's and City of London Court.

In 1931, the appellant applied to be trained as a Salvation army officer. She then subscribed to the following question: "Do you understand and agree that, as an intending officer, you are giving yourself to the work of the Salvation Army; that you are not employed; that you have no right to any 'wages'; that there is no contract of service and that whatever your future rank or service may be, your position, so long as you are in the Army, will be that of a voluntary co-operator in the Army's work for God, without claim to any other reward than the approval of God and the doing of the work itself brings to you?" A note was added that notwithstanding this question and without taking from the position set out "and because it is obvious that an officer cannot do his work unless he is maintained, the following regulation will so far as possible be carried into effect, but expressly subject to the regulations . . . as to contributions to the pension fund and the deduction of the 2½ per cent. there mentioned." It was added: "From the day of arrival at his appointment each officer may draw an allowance according to the scale operating at the time, provided that the necessary amount remains in hand after current expenses are met." In 1933, the appellant became a lieutenant. In 1935, in the course of her duties, she injured herself by reason of an accident. The learned judge held that she was not entitled to compensation under the Workmen's Compensation Act, 1925.

GREENE, M.R., dismissing her appeal, said that the question was whether she was a workman within s. 3 (1) of the Act. The relationship between the Army and its officers was a spiritual one between persons united for spiritual work, the officers being subjected to strict discipline. There was no contractual relationship conferring rights enforceable by law. It would be startling if proceedings for breach of contract could be brought against an officer who failed to obey some direction as to the method of fulfilling his spiritual task.

ROMER and SCOTT, L.JJ., agreed.

COUNSEL: *Moules*; *Murphy*, K.C., and *Whitmee*.

SOLICITORS: *Frederick A. Cox*; *Ranger, Burton & Frost*.

[Reported by FRANCIS H. COWPER, Esq., Barrister-at-Law.]

Wheatley *v.* Lambton Hetton & Joicey Collieries Ltd.

Greene, M.R., Romer and Scott, L.JJ.
4th May, 1937.

WORKMEN'S COMPENSATION—INJURY FROM ACCIDENT—TOTAL INCAPACITY—SUBSEQUENTLY CERTIFIED SUFFERING FROM MINER'S NYSTAGMUS—WHETHER COMPENSATION PAYABLE FOR DOUBLE INCAPACITY.

Appeal from Durham County Court.

In January, 1935, a hewer of coal in a mine received spinal injuries in an accident which totally incapacitated him. Till July, 1935, when he returned to work, he received thirty shillings a week compensation. On the 21st September, 1936, he again became totally incapacitated from his injuries and the payments were resumed and continued thereafter. On the 3rd October, while thus totally incapacitated, he was certified to be suffering from miner's nystagmus, an industrial disease (the certificate being later upheld by the medical referee), and as a result to be totally incapacitated. He now claimed to be entitled to twenty-four shillings a week compensation in respect of this incapacity. (This amount was claimed because, on his return to work in July, 1935, he was given a place where he earned less than previously.) His Honour Judge Richardson dismissed the claim.

GREENE, M.R., dismissing the workman's appeal, said that the claim was for two total disablements which had been referred to as concurrent disablements. This claim, if right, would lead to a position in which a workman could receive two or three sets of compensation in respect of different injuries, and the Workmen's Compensation Act would give a solatium for misfortune rather than compensation for injury by accident. His Lordship referred to ss. 1 (1), 9 (1) and 43, and said that to bring an industrial disease into line with injury by accident there must be (1) disease; (2) consequential disablement (*Thomas French* v. *Archibald Russell Ltd.*, 50 T.L.R., at p. 453). Proof of these consisted in the certificate of a certifying surgeon and the decision of the medical referee, which was conclusive with regard to all matters falling within his competence under s. 43. Before compensation was payable, the governing condition was that there should be total or partial incapacity resulting from the injury. Here the date of disablement resulting from miner's nystagmus was to be taken under s. 43 (2) as the 3rd October, 1936. But, at that date, he had no element of capacity

for work left in him which could be taken away, since he was already totally incapacitated as a result of his spinal injury. The jurisdiction of the certifying surgeon was limited to certifying the presence of the disease and whether it disabled the workman from earning full wages. Neither the surgeon nor the medical referee were concerned with the case of a man already incapacitated from some other cause. The certificate and the decision of the referee, taken by themselves, did not dispose of the whole matter, and it was legitimate to inquire whether the incapacity was due to something else. This man, so long as he was totally incapacitated by the spinal injury, could not be treated as incapacitated over again by the nystagmus. He was amply safeguarded by a declaration of liability which would enable him, if subsequent circumstances warranted it, to claim compensation in respect of incapacity due to nystagmus.

ROMER and SCOTT, L.JJ., agreed.

COUNSEL: *Sir Richard Stafford Cripps*, K.C., and *J. Pugh*; *Sir Walter Monckton*, K.C., and *Charlesworth*.

SOLICITORS: *T. D. Jones & Co.*, for Ronald W. Williams, of Durham; *Gregory, Rowcliffe & Co.*, for Cooper & Jackson, of Newcastle-upon-Tyne.

[Reported by FRANCIS H. COWPER, Esq., Barrister-at-Law.]

Ashby *v.* Tolhurst.

Greene, M.R., Romer and Scott, L.JJ.
5th and 6th May, 1937.

CONTRACT—CAR PARK—TERMS ON WHICH CAR LEFT—WHETHER OWNERS RESPONSIBLE FOR LOSS—MISDELIVERY.

Appeal from Southend County Court.

The plaintiff left his motor car in the car park of the defendants, receiving a ticket headed "Seaway Car Park—Car Park Ticket." The date, the number of the car and a receipt for 1s. paid to the attendant was inserted by him. On it was printed: "The proprietors do not take any responsibility for the safe custody of any cars or articles therein or for any damage to the cars or articles, howsoever caused . . . all cars being left in all respects entirely at their owner's risk." It was added that the ticket should be produced if required. In the owner's absence, a man who told the attendant that he was a friend of his and had his permission to take the car, drove it away. He did not produce the ticket and had not the key of the car which was locked and which he opened by passing his hand through the windscreen. In fact he was not known to the plaintiff and the car was lost. The learned county court judge awarded the plaintiff damages against the owners of the car park, holding that the handing over of the car to a stranger was an act of conversion and a breach of an implied term of the contract.

GREENE, M.R., allowing the defendants' appeal, said that parking a car was nothing more than leaving a car. This document meant no more than that the holder was entitled to park his car in the car park, but that that did not render the owners responsible for the car. The relationship was one of licensor and licensee only and carried no obligation of the licensor in relation to the chattel, either to provide anyone to look after it or to be responsible for the negligence of any attendant. Moreover, at the material time, possession of the car was not vested in the owners of the car park. Again, if any ghost of a contract of bailment were left alive by the conditions of the ticket, it was conceded that the ordinary obligation of the bailee with respect to the custody of the bail was excluded, but it was said that the defendants were not protected if some active step were taken in the way of delivery to someone else. But anyone could walk on to the ground or get into a car and drive away. The facts did not amount to a delivery by the attendant such as was necessary for the success of the contention. But even if there were delivery, his lordship could not see why it was not within the protection of the condition.

ROMER and SCOTT, L.JJ., agreed.

COUNSEL: *Percy Lamb; Cloutman.*

SOLICITORS: *Cunliffe, Blake & Mossman*, for *Tolhursts and Cozens*, of Southend-on-Sea; *Geoffrey B. Gush.*

[Reported by FRANCIS H. COWPER, Esq., Barrister-at-Law.]

High Court—Chancery Division.

In re Leeke's Settlement Trusts; Borough *v.* Leeke.

Simonds, J. 15th and 21st April, 1937.

SETTLEMENT—SETTLED ESTATES CHARGED WITH PORTIONS—CHILDREN OTHER THAN SON ENTITLED TO PREMISES FOR FIRST ESTATE IN TAIL MALE—VESTED IN LIFE TENANT'S LIFETIME—ELDER OF TWO SONS DISENTAILED AND RESETTLED ESTATES—PREDECEASED LIFE TENANT—WHETHER ESTATE ENTAILED TO PORTION.

In 1876 certain estates were settled, R.M.L. becoming tenant for life, with remainder to his son R.L. for his life, with remainder to his first and other sons successively in tail male, with certain remainders over. R.L. was given power to charge the estates with portions for his children other than a first or only son or daughter indefeasibly entitled to the premises for the first estate in tail male or in tail respectively. On his marriage he made a settlement in 1881 charging the estate with portions for the children of the marriage, but excluding the children excluded from the ambit of the power. The portions were to vest on each son attaining twenty-one, and were to be paid at that date, if after the death of R.M.L. and R.L., and otherwise immediately on the death of the survivor of them. In 1882 R.L. succeeded to the property. There were two sons of the marriage, R.H.L. and C.L., born in 1883 and 1887 respectively. In 1905, with the consent of R.L. as protector of the settlement, R.H.L. executed a disentailing assurance. Leaving untouched all estates and interests prior to his own, he disentailed the settled estates and limited them to such uses as he and his father should jointly appoint, and, subject thereto, upon the trusts upon which they stood immediately before the disentailing assurance. This power was exercised only once, when by mortgage £29,000 was raised on the security of the settled estates, the greater part being used to pay off mortgages and discharge incumbrances on the estates and to pay the costs incidental to the transaction. A sum of about £57, which remained over, was paid to R.H.L. In the lifetime of R.L. (who at the date of these proceedings was still living), in 1915, R.H.L. died, and in 1916 C.L. died, both bachelors and intestate, and E.H.L., a nephew of R.L., became the remainderman and entitled to the first estate in tail in remainder. The question arose whether R.H.L. had disentitled his estate from taking a portion.

SIMONDS, J., in giving judgment, said that it was conceded that C.L., the second son, did not come within the exclusion for the purposes of the portions provision. Though for a while he had been the only surviving son, it could not be argued, in the face of the authorities, that he had had such an estate in tail as precluded him. On the point for decision, his lordship was guided by *Collingwood* v. *Stanhope*, L.R. 4 H.L., at p. 52. Though an "eldest" son might be by the terms of a settlement excluded from a portion and a certain son had in nature that character, yet he was not excluded if he did not in fact succeed to the settled estates (see *Duke* v. *Doidge*, 2 Ves. Sen. 203). Thus, an exclusion of a "first" or "only" son did not operate if he did not in fact succeed to the estate. Though R.H.L. was the first son of his father and all his life entitled to the first estate in tail male in remainder, it could not have been said that he was excluded from the portions provision, but for the transaction into which he entered. It was at the date when the portions were distributable that it must be ascertained whether a child was, or was not, entitled. Here the date of distribution had not yet

arrived, but no event could happen affecting the rights of the parties. As to the circumstances which enabled one to say that a child had, or had not, such an estate as to exclude him from a portion, it was not necessary for exclusion that he should enjoy an estate in possession in the settled estates at the date of distribution. It was enough that he should at some time have been entitled to the estate, or that, being entitled to an estate in remainder, he had, with the assistance of the tenant for life, procured for himself out of the settled estates a benefit exceeding any share of portions which could come to him (*In re Fitzgerald's Settled Estates* [1891] 3 Ch. 394). In these questions no point of accounting arose. A son either was, or was not, excluded. He could not be included subject to bringing into account sums or advantages which he had received. His lordship's conclusion was that, whenever a son entitled in remainder to an estate which, if it were in possession, would exclude him from a portion, by virtue of that estate in remainder exercised dominion over and disposed of the settled property, he was for ever excluded from the portions provision. The court could not measure the benefit to himself or the detriment to others created by the son disentailing the settled property. His lordship referred to *Rooke* v. *Plunkett* [1902] 1 I.R. 299, and said that R.H.L. was excluded though his estate never vested in possession and the benefit which he received out of the estate was trifling, and though the detriment to persons entitled in remainder after him might have been none. It mattered not whether the benefit received by him was equal to, or much less than, the portion to which he would have been entitled. It was sufficient that, being entitled in remainder to an estate tail, he elected to take advantage of that estate and use it to deal with the settled estates. The dispositions he made and the advantages he gained were irrelevant.

COUNSEL: *Geoffrey Cross; Morton*, K.C., and *R. H. Hodge; Roxburgh*, K.C., and *Cecil Preston*.

SOLICITORS: *Metcalfe, Hussey & Hulbert; J. F. B. Satchell; Preston Lane-Claypon & O'Kelly*.

[Reported by FRANCIS H. COWPER, Esq., Barrister-at-Law.]

Attorney-General *v.* Liverpool Corporation and Others.

Simonds, J. 29th April, 1937.

ELECTRICITY—LOCAL AUTHORITY—SUPPLY OF CURRENT TO RAILWAY—INCORPORATED RAILWAY—AREA OF SUPPLY—ELECTRICITY (SUPPLY) ACT, 1926 (16 & 17 Geo. 5, c. 51), s. 47.

The Birkenhead Corporation and the Liverpool Corporation were each authorised undertakers for the supply of electricity within their respective areas of supply under the Electricity Supply Acts, 1882–1936. Each pursuant to the 1926 Act took a supply from the Central Electricity Board for their respective undertakings. The L. M. S. Railway Co., an amalgamated company under the Railways Act, 1921, were incorporated by the North Western, Midland and West Scottish Amalgamation Scheme, 1923, and owned a railway undertaking partly within and partly without the Liverpool Corporation's area of supply. Under the Scheme they became owners of an undertaking previously belonging to the Wirral Railway Co. No part of it passed through the Liverpool Corporation's area of supply, but it passed through the areas of the Birkenhead Corporation and other local authorities. It had no rail connection with the other railways of the L. M. S. Railway Co., save at West Kirby. The company having adapted it to electric traction invited tenders for the supply of electricity from the Liverpool and Birkenhead Corporations, both of which were willing to supply it. The former having given a lower tender, the company wished to accept it, and after an inquiry under s. 47 of the Act, held in October, 1936, the Minister of Transport consented. It was proposed that delivery of the supply should be at a point within the Corporation's area, whence the current should be transmitted by cable through the tunnel belonging to the Mersey Railway Co. under a wayleave agreement with the L. M. S. Railway Co. to a point on the Wirral Railway. The supply was to be given at 11,000 volts, but a portion might be transformed down for lighting and heating. (The Liverpool Corporation at present supplied the railway company with electricity, part of which was used for operating certain capstans, wagons and hoists.) It was now contended that the supply could only be given subject to s. 47 of the Act, and that the Liverpool Corporation were not entitled to give it on the ground that the Wirral Railway was a separate undertaking outside its area.

SIMONDS, J., in giving judgment, said that it had been argued that the L. M. S. Railway Co. had no larger powers in relation to the Wirral Railway than the former owners would have had if there had been no absorption, such powers being limited to those contained in s. 6 of the Wirral Company's own Act in 1900. His lordship could not give effect to this contention. After the absorption scheme became operative, a reference to the undertaking of the company in general legislation meant the whole undertaking, including undertakings absorbed. In construing s. 47 there was no reason to disintegrate the undertaking as it existed now into its constituent parts. That would deprive the company of the benefits intended to be achieved by amalgamation. *Blackpool Corporation* v. *Starr Estate Co., Ltd.* [1922] 1 A.C. 34, could not be invoked by the plaintiffs. The company was competent to receive whatever supply it could obtain under s. 47 and use it within or without the area of supply for any purpose of its undertaking. Moreover, the words "may supply" in s. 47 did not refer back exclusively to the Electric Lighting Act, 1909, s. 5. The question also arose whether the Liverpool Corporation "were supplying" within their area electricity for haulage and traction. It was sufficient to bring the company within the section if there was a supply for the general purposes of the company, including all the haulage and traction involved in operating capstans, hoists and traversers. The company and Corporation were both within the section.

COUNSEL: *Sir Richard Stafford Cripps*, K.C.; *Henderson*, K.C., and *Anthony Ward*; *W. E. T. Jones*, K.C., and *A. Tylor*.

SOLICITORS: *Robins, Hay & Waters*, for the Town Clerk, Birkenhead; *Alexander Eddy*.

[Reported by FRANCIS H. COWPER, Esq., Barrister-at-Law.]

High Court—King's Bench Division.

Victor Weston (Fabrics) Ltd. *v.* Morgenstern (a firm).

Finlay, J. 9th March, 1937.

DEBTOR AND CREDITOR—DEED OF ARRANGEMENT EXECUTED BY FIRM—GOODS SUPPLIED TO AND PAID FOR BY FIRM'S TRUSTEE—RIGHT OF SUPPLIER TO SUE FOR GOODS SOLD AND DELIVERED BEFORE EXECUTION OF DEED.

Action for money due for goods sold and delivered.

From August to November, 1936, the plaintiff company sold and delivered goods to the defendant firm. On the 21st December, 1936, the defendants executed a deed of arrangement for the benefit of their creditors. On the same date the defendants' trustee wrote all their creditors, including the plaintiffs, a circular letter announcing that the deed had been executed. The trustee proceeded to carry on the defendants' business and ordered goods from the plaintiffs in his name, which were delivered and duly paid for. The plaintiffs, having sued in respect of goods sold and delivered before the deed of arrangement was executed, the defendants, while admitting that the sum claimed was due, maintained that the plaintiffs were precluded by their conduct from suing outside the deed.

FINLAY, J., said that it was clear that the plaintiffs were precluded from relying on the deed as an act of bankruptcy, the point being whether they were so bound by it as to be unable to succeed in this action. Attention had been called

to *In re Stray* (1867), 2 Ch. App. 374, where the law was laid down by Lord Cairns. Then there were *In re Brindley* [1906] K.B. 377, where the matter was fully discussed by Vaughan-Williams, L.J., and *In re Mills* [1906] 1 K.B. 389, where the distinction was pointed out, which was based on the passage in Lord Cairns' judgment where it was said that a creditor might be precluded by his conduct that a deed of this kind was an act of bankruptcy, and still not be bound by the deed. The matter was further discussed in *In re Sunderland* [1911] 2 K.B. 658. He (his lordship) had arrived at the conclusion that the plaintiffs were by their conduct estopped from denying the title of the trustee. The facts showed that, acting with knowledge, they had recognised him. Not only did they send him their account, but they received orders and took payments from him. Their conduct could only be based on a recognition of the deed and of the trustee's title, that title being derived from the deed alone. The principle that it was not permissible both to approbate and to reprobate seemed to apply here. It was clear that the plaintiffs, by accepting orders and receiving payments from the trustee, were deriving a profit from him. It would be a remarkable result if, having done that, they were then entitled to turn round and say that they refused to be bound by the deed or to recognise the trustee, and that they preferred to bring their own action outside the deed. As a result of his survey of the authorities and appreciating the distinction between being precluded from relying on the deed as a matter of bankruptcy and being precluded from suing outside the deed through being actually bound by it, he (his lordship) decided that the plaintiffs were bound by the deed, and there must be judgment for the defendants.

COUNSEL: *Greer Jackson*, for the plaintiffs; *Gerald Gardiner*, for the defendants.

SOLICITORS: *Henry Hilbery & Son; Wigram & Co.*, agents for *Laurence Marks*, Manchester.

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

Trustees of Wernher's Charitable Trust *v.* Commissioners of Inland Revenue.

Lawrence, J. 18th, 19th March, 1937.

REVENUE—INCOME TAX—TRUST FUND—SUM SPENT ON EQUIPPING RECREATION GROUND HELD IN TRUST FOR EMPLOYEES OF A PUBLIC COMPANY—WHETHER SUM SO SPENT EXEMPT FROM TAX—INCOME TAX ACT, 1918 (8 & 9 Geo. 5, c. 40), s. 37 (1).

Appeal by case stated from a decision of the Commissioners for the Special Purposes of the Income Tax Acts.

In 1933 a company, Electrolux Limited, with over 1,400 employees at Luton, conveyed certain lands to an association in trust to permit it in perpetuity to be used as a place of recreation for employees of the company, or, if no longer required for that purpose, then for the benefit of the inhabitants of Luton. The appellant trust having spent over £3,500 in equipping the ground with pavilions, tennis courts, etc., claimed repayment of income tax on the sum so spent. By s. 37 (1) of the Income Tax Act, 1918: "Exemption shall be granted . . . (*b*) from tax . . . in respect of any yearly interest or other annual payment forming part of the income of any . . . trust established for charitable purposes only, or which . . . are applicable to charitable purposes only, and so far as the same are applied to charitable purposes only." The Special Commissioners held that the purposes on which the £3,500 were spent were not charitable.

LAWRENCE, J., said that it was argued for the appellants that the recreation ground for such a company as the one in question was a public purpose, on the ground that industry and what might be called the "industrial army" were as important to the community at large as the military army. Reliance was placed on *In re Good, Harington* v. *Watts* [1905] 2 Ch. 60; *In re Gray, Todd* v. *Taylor* [1925] Ch. 362; *In re Hadden, Public Trustee* v. *More* [1932] 1 Ch. 133. It was also argued for the appellants that the money in question had been spent on a particular section of the public, reliance being placed on *Goodman* v. *Saltash Corporation* (1882), 7 App. Cas. 633, at pp. 642 and 650; *In re Christchurch Inclosure Act* (1888), 38 Ch. D. 520; and *In re Mellody, Brandwood* v. *Haden* [1918] 1 Ch. 228. On the other hand, it was contended for the Crown that the present case was on all fours with *In re Drummond* [1914] 2 Ch. 90. He (his lordship) was of opinion that the facts of that case and the present were indistinguishable. It was true that the physical recreation of the public, and of any particular section of it, conferred some benefit on the public. In *In re Hadden* (*supra*) a trust for the provision of a recreation ground for the public was held to be a charitable trust. Here, however, the money had been spent on equipping a recreation ground for the employees of Electrolux Limited only. In his (his lordship's) opinion, the ground on which *In re Good* (*supra*) and *In re Gray* (*supra*) were decided was that the army was of such importance to the public that any money spent in its interest was spent in that of the community. That did not apply to the present case, and *In re Drummond* (*supra*) was an authority that that principle could not be extended to the industrial army. If it could be so extended, it could not be limited in any way. As to the argument that the employees of the company were a particular section of the public, there seemed to be a valid distinction between a particular section of the public at large, where the section consisted of persons residing in a particular locality, and a particular section created by the selection of a public company. The principles of *Goodman* v. *Saltash Corporation* (*supra*), *In re Christchurch Inclosure Act* (*supra*), and *In re Mellody* (*supra*) were accordingly inapplicable. The appeal must be dismissed.

COUNSEL: *C. R. R. Romer*, for the appellants; *The Attorney-General* (Sir Donald Somervell, K.C.) and *R. P. Hills*, for the Crown.

SOLICITORS: *Devonshire, Wreford-Brown & Co.; The Solicitor of Inland Revenue.*

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

Provident Accident and White Cross Insurance Co. Ltd. *v.* Dahne and Another.

du Parcq, J. 23rd March, 1937.

CONTRACT—INDEMNITY—UNDERTAKING TO GUARANTEE PERFORMANCE OF A ROAD CONTRACT WITH A RURAL DISTRICT COUNCIL—CONTRACT MADE WITH COUNTY COUNCIL AS ROAD AUTHORITY AFTER PASSING OF LOCAL GOVERNMENT ACT, 1929—WHETHER GUARANTOR PRESUMED TO KNOW OF CHANGE—WHETHER BOUND BY UNDERTAKING.

Action tried by du Parcq, J.

In June, 1930, the defendants gave the plaintiff company a written undertaking that, in consideration of the company's issuing a bond for £2,250 on behalf of one, Farley, in favour of the Gower R.D.C. in connection with a contract for certain road improvement, they would indemnify the company against all losses arising to it as a result of issuing the bond. In July, 1930, the plaintiffs and Farley bound themselves by a bond which was as contemplated in the defendants' undertaking, except that it was in favour of the Glamorgan County Council instead of the Gower R.D.C. The plaintiffs having become liable to perform their obligations under the bond, the county council in November, 1935, obtained a judgment against them under which they had to pay the council £1,443. The plaintiffs now claimed to be indemnified in that sum by the defendants, who contended that they never intended or promised to indemnify the plaintiffs in respect of a bond in favour of the Glamorgan County Council.

DU PARCQ, J., said that he found that the defendants did not know until long after the execution of the bond that

the road authority with whom Farley was contracting was the county council. It was argued for the plaintiffs, first, that the defendants must be taken to know that from the 1st April, 1930, the county council, and not the Gower R.D.C., was the competent road authority involved. In his opinion, that legal presumption would not supply the lack of actual knowledge of the change which he (his lordship) found. It was not strictly accurate to say that everyone was presumed to know the law. The maxim, as was said, for example, by Lush, J., in *R.* v. *Tewkesbury Corporation* (1868), L.R. 3 Q.B. 629, at p. 639, was *ignorantia legis neminem excusat.* If the defendants had agreed to indemnify the plaintiffs on a bond in favour of "the competent road authority," they would without doubt have been precluded by the application of that principle from asserting that, not having studied the Local Government Act, 1929, they were not aware that the county council had become the road authority. It was another thing to say that the defendants must be precluded from asserting that they meant what they said (i.e., Gower R.D.C., and not the county council), because, if they had known the provisions of a statute, they might reasonably have been expected to say something else. It had further been argued for the plaintiffs that the words in the undertaking, "in favour of the Gower R.D.C.," were surplusage or immaterial. He (his lordship) was not, however, prepared to treat it as axiomatic, as a matter of fact or of law, that every road authority was equivalent to every other road authority for this purpose. Much might depend, from the point of view of a guarantor, on the idiosyncrasies of the county council. As to the plaintiffs' contention that the defendants, by their conduct in permitting the plaintiffs to execute the bond in favour of the county council, were estopped from denying that the bond was executed in pursuance of their undertaking, even if the defendants had seen the bond before it was executed (and there was nothing to show that they had), and their silence had amounted to a representation, it would have been a representation that they intended to indemnify the plaintiffs, notwithstanding a discrepancy between the undertaking and the bond, and such a representation of intention could not found an estoppel: see the opinion of Lord Selborne, L.C., in *Citizens' Bank of Louisiana* v. *First National Bank of New Orleans* (1873). L.R. 6 H.L. 352, citing a passage from the judgment of Lord Cranworth, L.C., in *Jorden* v. *Money* (1854), 5 H.L. Cas. 185. The action must be dismissed.

COUNSEL: *Trevor Hunter*, K.C., and *Morris Morgan*, for the plaintiffs; *P. Quass* and *E. Davies*, for the defendants.

SOLICITORS: *Blyth, Dutton, Hartley & Blyth; Davies, Arnold & Co.*, agents for *G. Tracy Phillips*, Ammanford.

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

Court of Criminal Appeal.

R. *v.* Fowler.

Branson, du Parcq and Lewis, JJ. 23rd March, 1937.

ROAD TRAFFIC—MOTOR CAR—DRIVER IN CHARGE OF WHILE UNDER INFLUENCE OF ALCOHOL—DISQUALIFICATION FOR INDEFINITE PERIOD FOR HOLDING LICENCE—VALIDITY—ROAD TRAFFIC ACT, 1930 (20 & 21 Geo. 5. c. 43), s. 15.

Appeal against conviction and sentence.

In February, 1937, the appellant was convicted at Middlesex Sessions, of being, when in charge of a motor vehicle, under the influence of drink, to such an extent as to be incapable of controlling the vehicle properly. He was sentenced to six months' imprisonment in the second division and disqualified for an indefinite period for holding a driving licence, with leave to apply to the court at any time after six months for renewal of the licence on proof that he was no longer addicted to drink. He now appealed against conviction and sentence, contending with regard to the latter, that the disqualification for an indefinite period for holding a driving licence was *ultra vires* the court. By s. 15 (2) of the Road Traffic Act, 1930, "a person convicted of an offence under this section shall, unless the Court . . . thinks fit to order otherwise and without prejudice to the power of the Court to order a longer period of disqualification, be disqualified for a period of 12 months from the date of the conviction for holding or obtaining a licence."

LEWIS, J., giving the judgment of the court, said that s. 15 (2) did not give the court power to disqualify for an indefinite period a person convicted of an offence under s. 15 (1). That part of the order of sessions was wrong, and disqualification for a period of five years must be substituted. The appellant might still apply after six months for the removal of the disqualification on the terms prescribed by quarter sessions. Apart from that variation of the order as to disqualification, the appeal would be dismissed.

COUNSEL: *B. Gillis*, for the appellant; *Maxwell Turner*, for the Crown.

SOLICITORS: *Theodore Elman & Co.; The Solicitor to the Metropolitan Police.*

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

Obituary.

MR. B. J. AIRY.

Mr. Bernard John Airy, M.A. Cantab., solicitor, senior partner in the firm of Messrs. Beamish, Hanson, Airy & Co., of New Square, Lincoln's Inn, died in London on Wednesday, 12th May, at the age of sixty-three. Mr. Airy was admitted a solicitor in 1898.

MR. F. E. F. BARHAM.

We regret to announce the death on 20th May of Mr. Francis Edward Foster Barham, solicitor, who retired recently from the firm of Messrs. Sharpe, Pritchard & Co., of New Court, W.C., and Palace Chambers, Westminster, S.W. A full notice will appear in our next issue.

MR. R. P. DAVISON.

Mr. Robert Pickering Davison, LL.B. Lond., solicitor, head of the firm of Messrs. Pittman & Davison, of New Broad Street, E.C., died recently at the age of forty-six. Mr. Davison was admitted a solicitor in 1913.

MR. T. B. HOOPER.

Mr. Thomas Beverley Hooper, solicitor, a partner in the firm of Messrs. Hooper, Ryland & Boddington, of Temple Row, Birmingham, died at his home at Harborne on Tuesday, 18th May, at the age of fifty-five. Mr. Hooper was admitted a solicitor in 1907.

MR. A. H. SYMONS.

Mr. Albert Henry Symons, solicitor, a partner in the firm of Messrs. Symons & Gay, of Romford, died at Leigh-on-Sea on Tuesday, 11th May. Mr. Symons was admitted a solicitor in 1906.

MR. H. M. WILLIAMS.

Mr. Hugh Meyrick Williams, solicitor, of Newport, Mon. died on Monday, 3rd May, at the age of fifty-five. Mr. Williams, who was admitted a solicitor in 1908, was a member of Newport Town Council. He was Moderator of Monmouthshire Presbytery and a former President of Newport Free Church Council.

Mr. Frank Burton, solicitor, of Great Yarmouth, left £20,615, with net personalty £16,977.

Reviews.

The Shops Acts, 1912 to 1936. By W. E. WILKINSON, LL.D. (Lond.), Solicitor of the Supreme Court. Second Edition. 1937. Demy 8vo. pp. xxiii and (with Index) 246. London, Liverpool, Glasgow and Birmingham: The Solicitors' Law Stationery Society, Limited. 15s. net.

The law of shops is approaching in complexity the law of factories, and this book is a compendium of the statutes and rules affecting chiefly the periods of opening and closing, and the health of shop assistants. The second edition has been rendered necessary by the efforts of Parliament to grapple with the subject of Sunday trading. Three statutes were passed with this object in 1936 alone, and the most recent, viz., the Shops (Sunday Trading Restriction) Act, 1936, came into force on the 1st May, 1937. The detailed regulations are contained in the Shops Regulations, 1937, and these (with the prescribed forms) are set out at the end of App. I. The pitfalls of the modern retailer are many, and this book will form a handy guide to the lay client. In the event of his unwittingly becoming involved in a prosecution, his legal advisers will find the relevant case law fully discussed in the footnotes. Pending the passing of a consolidating statute, this work will save much time and labour (besides eliminating the possibility of oversight) in ascertaining the statutory rights and liabilities of retailers and their assistants.

Cases Illustrating General Principles of the Law of Contract. By Sir JOHN MILES, Warden of Merton College, Oxford, and J. L. BRIERLY, Fellow of All Souls College, Oxford, Barristers-at-Law. Second Edition, 1937. London: Humphrey Milford, Oxford University Press. 21s. net (with Anson's Contract, 33s. net.).

This second edition of a collection of cases begun in the lifetime of the late Sir William Anson was approved by him as likely to be a useful companion volume to his great work on the Law of Contract. In the present volume a few important recent cases have been substituted for some of the cases included in the first volume, bringing the present edition of this valuable work quite up to date. To the student of Contract Law, such a selection and review of the outstanding decisions of the courts on the different aspects of the law relating to this subject must prove of the greatest value; and we have no doubt that the demand for the new edition will be widespread.

The Modern Law of Real Property. By G. C. CHESHIRE, D.C.L., M.A., of Lincoln's Inn, Barrister-at-Law. Fourth Edition. 1937. Royal 8vo. pp. xlviii and 850 (Index, 68). London: Butterworth & Co. (Publishers), Ltd. 30s. net.

Cast in an academic mould, the usefulness of this book for practitioners is naturally restricted; but the thorough revision which the present edition incorporates should render it more than ever acceptable to students for whom it is intended. The opportunity may be taken of reiterating the author's "mild protest against the cult of the short book" for considerable as is the bulk of the present work, it is difficult to see how anything approaching an adequate account of the complexities of English real property law could have been given within narrower limits. The work may be confidently recommended for the use of those preparing for the various legal examinations.

The County Court Pleader. By ALEXANDER CAIRNS, of the Middle Temple and Northern Circuit, Barrister-at-Law. 1937. Royal 8vo. pp. xxvii and (with Index) 608. London: Sweet & Maxwell, Limited; Stevens & Sons, Limited. £1 10s. net.

The wide range of subjects now within the jurisdiction of the county court has created a demand for books of precedents of pleadings. Modern legislation tends to constitute the county court the tribunal for giving a speedy decision, at a minimum of expense. The right of appeal is limited, in the sense that no new point can be taken in the Court of Appeal, and it is therefore necessary to raise all issues in the court of first instance. This book will save the practitioner from many an oversight in the latter respect, and adequate provision is made for remitted actions, e.g., breach of promise of marriage. The precedents given deal fully with claims at common law, and to a less extent with claims in equity, under the originating jurisdiction of the county court. Claims under the appellate jurisdiction, e.g., as regards demolition orders under the Housing Act, 1936, or as regards compensation or a new lease under the Landlord and Tenant Act, 1927, are apparently regarded as outside the scope of the work. The subject of agricultural holdings, however, is duly noticed, and also negligence in its many aspects, e.g., running-down cases, concealed traps, faulty diagnosis by doctors, etc. There are no footnotes, but about 2,000 cases are quoted in the appropriate paragraphs of the text. Besides providing precedents, the book will therefore be useful in furnishing material for argument on the evidence.

Books Received.

Law Revision Committee. Sixth Interim Report. May, 1937. London: H.M. Stationery Office. 6d. net.

Tax Cases. Vol. XX, Part VIII. 1937. London: H.M. Stationery Office. 1s. net.

Legal Notes and News.

Honours and Appointments.

The Lords Commissioners of his Majesty's Treasury have appointed Mr. John Fox, O.B.E., to be Chief Registrar of Friendly Societies and Industrial Assurance Commissioner, in succession to Sir G. Stuart Robertson, K.C., who will retire from the public service on 24th May. Mr. Fox, who was admitted a solicitor in 1905, has held office as an Assistant Registrar of Friendly Societies for the past 25 years and has also served as Deputy Industrial Assurance Commissioner.

Mr. S. BRIGGS, Assistant Solicitor, Bootle, has been appointed Deputy Town Clerk of Widnes, and not Town Clerk as stated in last week's issue. Mr. E. W. McNorton is Town Clerk of Widnes.

Notes.

A meeting of the Grotius Society will be held on Wednesday, the 26th May, at 4.30 p.m., when a paper will be read by Dr. P. L. Jacks, formerly Principal of Mansfield College, on "The Frailty of Military Alliances," at No. 2 King's Bench Walk, The Temple. Visitors will be welcome.

The last of the series of Coronation Tours in aid of King Edward's Hospital Fund for London will be held on Friday, 28th May, at 3 p.m., when a visit will be made to Windsor Castle and St. George's Chapel. The tour will be conducted by the Castle staff and by the Dean of Windsor. Further information may be obtained from the Secretary, King Edward's Hospital Fund for London, 10 Old Jewry, E.C.2.

The following days and places have been fixed for holding the Summer Assizes on the North Wales and Chester Circuit: Mr. Justice Talbot and Mr. Justice Greaves-Lord, Tuesday, 1st June, at Newtown; Saturday, 5th June, at Dolgelly; Thursday, 10th June, at Caernarvon; Wednesday, 16th June, at Beaumaris; Saturday, 19th June, at Ruthin; Thursday, 24th June, at Mold; Monday, 28th June, at Chester.

The King, on the recommendation of the Secretary of State for Scotland, has accepted the resignation by Lord Morison of his office as one of the Senators of the College of Justice in Scotland, to take effect as from 13th May 1937. Lord Morison has completed fifteen years' service as a Judge of the Court of Session. He was called to the Scottish Bar in 1891, to the English Bar in 1899, and took silk in 1906 He was appointed to the Bench in 1922.

At the North London Police Court last Tuesday, the magistrate (Mr. Basil Watson, K.C.) commented upon the increasing number of speed summonses. He said: "Some months ago I asked motorists to drive carefully in this district, which can be very dangerous for traffic, and they acceded to my request. Speed summonses went down to about three or less a day. To-day there are 15, and they seem to be increasing in number. If this does not stop I shall double the fines, and if that does not produce any result I shall treble them."

Court Papers.

Supreme Court of Judicature.

ROTA OF REGISTRARS IN ATTENDANCE ON GROUP II.

DATE.	EMERGENCY ROTA.	APPEAL COURT No. I.	MR. JUSTICE CLAUSON. Witness Part I.	MR. JUSTICE LUXMOORE. Non-Witness
	Mr.	Mr.	Mr.	Mr.
May 24	Ritchie	Hicks Beach	*Jones	Blaker
,, 25	Blaker	Andrews	*Ritchie	More
,, 26	More	Jones	*Blaker	Hicks Beach
,, 27	Hicks Beach	Ritchie	More	Andrews
,, 28	Andrews	Blaker	Hicks Beach	Jones
,, 29	Jones	More	Andrews	Ritchie

DATE	GROUP II. MR. JUSTICE FARWELL. Witness Part II.	MR. JUSTICE BENNETT. Non-Witness.	GROUP I. MR. JUSTICE CROSSMAN. Witness Part I.	MR. JUSTICE SIMONDS. Witness Part II.
	Mr.	Mr.	Mr.	Mr.
May 24	*Ritchie	Andrews	*More	Hicks Beach
,, 25	*Blaker	Jones	*Hicks Beach	Andrews
,, 26	*More	Ritchie	*Andrews	Jones
,, 27	*Hicks Beach	Blaker	*Jones	Ritchie
,, 28	*Andrews	More	*Ritchie	Blaker
,, 29	Jones	Hicks Beach	Blaker	More

*The Registrar will be in Chambers on these days, and also on the days when the Court is not sitting.

TRINITY SITTINGS, 1937.

COURT OF APPEAL.

APPEAL COURT No. 1.

Monday, 24th May—Exparte Applications, Original Motions, Interlocutory Appeals from the Chancery and Probate and Divorce Divisions, and, if necessary, Appeals from the Chancery Division (Final List).

Appeals from the Chancery Division (Final List) will be continued until further notice.

APPEAL COURT No. II.

Monday, 24th May—Exparte Applications, Original Motions, Interlocutory Appeals from the King's Bench Division, and, if necessary, Appeals from the King's Bench (Final and New Trial) List.

Appeals from the King's Bench (Final and New Trial) List will be continued until further notice.

HIGH COURT OF JUSTICE.
CHANCERY DIVISION.

GROUP I.

Before Mr. Justice CLAUSON.

(The Witness List. Part I.)

(*Actions, the trial of which cannot reasonably be expected to exceed* 10 *hours.*)

Mondays.....Bankruptcy Business.
Tuesdays, Wednesdays, Thursdays, Fridays } The Witness List. Part I.

Bankruptcy Judgment Summonses will be taken on Mondays the 7th and 28th June, and 19th July.

Bankruptcy Motions will be taken on Mondays, the 31st May, 21st June and 12th July.

A Divisional Court in Bankruptcy will sit on Mondays the 14th June, 5th and 26th July.

Before Mr. Justice LUXMOORE.

(The Non-Witness List.)

Mondays.....Chamber Summonses.
Tuesdays.....Motions, Short Causes, Petitions, Procedure Summonses, Further Considerations and Adjourned Summonses.
Wednesdays...Adjourned Summonses.
Thursdays....Adjourned Summonses.
Fridays.....Motions and Adjourned Summonses.

Before Mr. Justice FARWELL.

(The Witness List. Part II.)

Mr. Justice FARWELL will sit daily for the disposal of the List of longer Witness Actions.

GROUP I.

Before Mr. Justice BENNETT.

(The Non-Witness List.)

Mondays.....Chamber Summonses.
Tuesdays.....Motions, Short Causes, Petitions, Procedure Summonses, Further Considerations and Adjourned Summonses.
Wednesdays...Adjourned Summonses.
Thursdays....Adjourned Summonses. Lancashire Business will be taken on Thursdays, 27th May, 10th and 24th June, and 8th and 22nd July.
Fridays.....Motions and Adjourned Summonses.

Before Mr. Justice CROSSMAN.

(The Witness List. Part I.)

(*Actions the trial of which cannot reasonably be expected to exceed* 10 *hours.*)

Mondays.....Companies (Winding up) Business.
Tuesdays, Wednesdays, Thursdays, Fridays } The Witness List. Part I.

Before Mr. Justice SIMONDS.

(The Witness List. Part II.)

Mr. Justice SIMONDS will sit daily for the disposal of the List of longer Witness Actions.

Stock Exchange Prices of certain Trustee Securities.

Bank Rate (30th June, 1932) 2%. Next London Stock Exchange Settlement, Thursday, 27th May, 1937.

	Div. Months.	Middle Price 19 May. 1937.	Flat Interest Yield. £ s. d.	‡Approximate Yield with redemption £ s. d.
ENGLISH GOVERNMENT SECURITIES				
Consols 4% 1957 or after	FA	109⅜	3 12 11	3 6 6
Consols 2½%	JAJO	76½	3 5 4	—
War Loan 3½% 1952 or after	JD	101⅞	3 8 9	3 6 11
Funding 4% Loan 1960-90	MN	110½	3 12 5	3 6 9
Funding 3% Loan 1959-69	AO	96	3 2 6	3 4 1
Funding 2¾% Loan 1952-57	JD	92½xd	2 19 6	3 5 4
Funding 2½% Loan 1956-61	AO	87½	2 17 2	3 5 2
Victory 4% Loan Av. life 22 years	MS	109½	3 13 1	3 7 8
Conversion 5% Loan 1944-64	MN	113¾	4 8 4	2 15 0
Conversion 4½% Loan 1940-44	JJ	107⅝	4 3 7	1 17 3
Conversion 3½% Loan 1961 or after	AO	102	3 8 8	3 7 6
Conversion 3% Loan 1948-53	MS	100½	2 19 8	2 18 11
Conversion 2½% Loan 1944-49	AO	98½	2 10 10	2 13 6
Local Loans 3% Stock 1912 or after	JAJO	88¼	3 8 0	—
Bank Stock	AO	345½	3 9 5	—
Guaranteed 2¾% Stock (Irish Land Act) 1933 or after	JJ	80	3 8 9	—
Guaranteed 3% Stock (Irish Land Acts) 1939 or after	JJ	88	3 8 2	—
India 4½% 1950-55	MN	110½	4 1 5	3 9 7
India 3½% 1931 or after	JAJO	90	3 17 9	—
India 3% 1948 or after	JAJO	77½	3 17 5	—
Sudan 4½% 1939-73 Av. life 27 years	FA	111	4 1 1	3 16 10
Sudan 4% 1974 Red. in part after 1950	MN	109	3 13 5	3 2 11
Tanganyika 4% Guaranteed 1951-71	FA	109½	3 13 1	3 2 11
L.P.T.B. 4½% "T.F.A." Stock 1942-72	JJ	108	4 3 4	2 11 3
Lon. Elec. T. F. Corpn. 2½% 1950-55	FA	91	2 14 11	3 2 8
COLONIAL SECURITIES				
Australia (Commonw'th) 4% 1955-70	JJ	106	3 15 6	3 10 11
Australia (C'mm'nw'th) 3% 1955-58	AO	90	3 6 8	3 13 9
Canada 4% 1953-58	MS	109	3 13 5	3 5 5
*Natal 3% 1929-49	JJ	100	3 0 0	3 0 0
*New South Wales 3½% 1930-50	JJ	100	3 10 0	3 10 0
New Zealand 3% 1945	AO	94	3 3 10	3 17 9
Nigeria 4% 1963	AO	110	3 12 9	3 8 4
*Queensland 3½% 1950-70	JJ	100	3 10 0	3 10 0
South Africa 3½% 1953-73	JD	103xd	3 8 0	3 5 2
*Victoria 3½% 1929-49	AO	100	3 10 0	3 10 0
CORPORATION STOCKS				
Birmingham 3% 1947 or after	JJ	89	3 7 5	—
Croydon 3% 1940-60	AO	96½	3 2 2	3 4 4
Essex County 3½% 1952-72	JD	103½	3 7 8	3 4 4
Leeds 3% 1927 or after	JJ	86½	3 9 4	—
Liverpool 3½% Redeemable by agreement with holders or by purchase	JAJO	100	3 10 0	—
London County 2½% Consolidated Stock after 1920 at option of Corp.	MJSD	74½xd	3 7 1	—
London County 3% Consolidated Stock after 1920 at option of Corp.	MJSD	85xd	3 10 7	—
Manchester 3% 1941 or after	FA	87	3 9 0	—
Metropolitan Consd. 2½% 1920-49	MJSD	96xd	2 12 1	2 18 0
Metropolitan Water Board 3% "A" 1963-2003	AO	89½	3 7 0	3 8 0
Do. do. 3% "B" 1934-2003	MS	90½	3 6 4	3 7 2
Do. do. 3% "E" 1953-73	JJ	96	3 2 6	3 3 9
*Middlesex County Council 4% 1952-72	MN	108	3 14 1	3 6 2
* Do. do. 4½% 1950-70	MN	113	3 19 8	3 5 3
Nottingham 3% Irredeemable	MN	85½	3 10 2	—
Sheffield Corp. 3½% 1968	JJ	104	3 7 4	3 5 10
ENGLISH RAILWAY DEBENTURE AND PREFERENCE STOCKS				
Gt. Western Rly. 4% Debenture	JJ	110	3 12 9	—
Gt. Western Rly. 4½% Debenture	JJ	118½	3 15 11	—
Gt. Western Rly. 5% Debenture	JJ	128½	3 17 10	—
Gt. Western Rly. 5% Rent Charge	FA	128½	3 17 10	—
Gt. Western Rly 5% Cons. Guaranteed	MA	127	3 18 9	—
Gt. Western Rly. 5% Preference	MA	118½	4 4 5	—
Southern Rly. 4% Debenture	JJ	109	3 13 5	—
Southern Rly. 4% Red. Deb. 1962-67	JJ	110	3 12 9	3 7 11
Southern Rly. 5% Guaranteed	MA	126½	3 19 1	—
Southern Rly. 5% Preference	MA	117½	4 5 1	—

*Not available to Trustees over par.
‡In the case of Stocks at a premium, the yield with redemption has been calculated at the earliest date; in the case of other Stocks, as at the latest date.

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Stock

Approxi-mate Yield with Exemption	
s.	d.
6	6
—	
6	11
6	9
4	1
5	4
5	2
7	8
15	0
17	3
7	6
18	11
13	6
—	
—	
—	
—	
9	7
—	
—	
16	10
2	11
2	11
11	3
2	8
10	11
13	9
5	5
0	0
10	0
17	9
8	4
10	0
5	2
10	0
—	
4	4
4	4
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—	
18	0
8	0
7	2
3	9
6	2
5	3
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5	10
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7	11
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calculated